

**To:** Dalcher, Debra[dalcher.debra@epa.gov]; McLamb, Marguerite[McLamb.Marguerite@epa.gov]  
**Cc:** Lamason, Bill[Lamason.Bill@epa.gov]  
**Sent:** Mon 11/20/2017 9:27:17 PM  
**Subject:** RE: Peter's Example Regarding re. 129 rules

I will clarify with Peter, but I think he understood this distinction. I think his point was that in

## Ex. 5 - Deliberative Process

**From:** Dalcher, Debra  
**Sent:** Monday, November 20, 2017 4:18 PM  
**To:** Culligan, Kevin <Culligan.Kevin@epa.gov>; McLamb, Marguerite <McLamb.Marguerite@epa.gov>  
**Cc:** Lamason, Bill <Lamason.Bill@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>  
**Subject:** Peter's Example Regarding re. 129 rules

Kevin, Marguerite

I spoke with Brian Shrager, Jodi Howard, and Nabanita Modak regarding the potential for

## Ex. 5 - Deliberative Process

Above is my attempt at paraphrasing a short 129 discussion. Please let me know if you think this would be beneficial to research further with our 129 rule leads.

Thank you, Debra

Debra S. Dalcher

U.S. EPA

Policy and Strategies Group

Sector Policies and Programs Division, OAQPS

109 T.W. Alexander Drive

Research Triangle Park, NC 27711

Phone: 919-541-2443

**From:** Lamason, Bill  
**Location:** D201/Call in number Ex. 6 - Personal Privacy  
**Importance:** Normal  
**Subject:** OIAI Check in  
**Start Date/Time:** Mon 11/13/2017 2:15:00 PM  
**End Date/Time:** Mon 11/13/2017 2:45:00 PM

Check in. Kevin available until 10 am. Thank! Bill

**From:** Lamason, Bill  
**Location:** D201/Call in number Ex. 6 - Personal Privacy  
**Importance:** Normal  
**Subject:** OIAI Check in  
**Start Date/Time:** Mon 11/13/2017 2:15:00 PM  
**End Date/Time:** Mon 11/13/2017 3:00:00 PM

Check in. Kevin available until 10 am. Thank! Bill



**From:** Lamason, Bill  
**Location:** D220D/Call in number Ex. 5 - Personal Privacy  
**Importance:** Normal  
**Subject:** OIAI Check in (coordination with Kevin)  
**Start Date/Time:** Mon 11/6/2017 6:00:00 PM  
**End Date/Time:** Mon 11/6/2017 7:00:00 PM

Looks like all but Chuck are available at this time. We'll catch him after the call.

**From:** Torres, Elineth  
**Location:** RTP-D201-Max40/RTP-Bldg-D  
**Importance:** Normal  
**Subject:** OIAI check-in- Urgent-Document Attached  
**Start Date/Time:** Mon 10/30/2017 3:30:00 PM  
**End Date/Time:** Mon 10/30/2017 4:00:00 PM  
OIAI Options Pager 10 30 17.docx

This is an urgent check-in for OIAI.

Number to call- Ex. 6 - Personal Privacy

RTP Room D201

**From:** Torres, Elineth  
**Location:** Bill's Office  
**Importance:** Normal  
**Subject:** OIAI Check-in  
**Start Date/Time:** Wed 11/1/2017 2:00:00 PM  
**End Date/Time:** Wed 11/1/2017 2:30:00 PM

**Call-in number-**

Ex. 6 - Personal Privacy

To close the loop on the OIAI options document. Please send any edits to the document prior to the check-in.

Thanks,

Elineth

**From:** Tsirigotis, Peter  
**Location:** RTP-OAQPS-D210A-SPPD-IO-only/RTP-OAQPS-BLDG-D/Restricted  
**Importance:** Normal  
**Subject:** Update on Once In, Always In (OIAI), Call-in: Ex. 6 - Personal Privacy  
**Start Date/Time:** Wed 10/11/2017 2:00:00 PM  
**End Date/Time:** Wed 10/11/2017 2:30:00 PM

POC:

Elineth Torres

**From:** Harlow, David

**Location:** WJC-N 5415 + Dial: Ex. 6 - Personal Privacy **Participant Code:** Ex. 6 - Personal Privacy

**Importance:** Normal

**Subject:** Once in Always in Discussion

**Start Date/Time:** Wed 1/24/2018 2:30:00 PM

**End Date/Time:** Wed 1/24/2018 3:00:00 PM

To: David Harlow, Bill Lamason, Kevin Culligan, Debra Dalcher, Scott Jordan, Sonja Rodman, Penny Lassiter

**From:** Dalcher, Debra  
**Location:** Ex. 6 - Personal Privacy  
**Importance:** Normal  
**Subject:** FW: General Discussion  
**Start Date/Time:** Wed 1/10/2018 6:00:00 PM  
**End Date/Time:** Wed 1/10/2018 6:30:00 PM

-----Original Appointment-----

**From:** Dalcher, Debra  
**Sent:** Tuesday, January 09, 2018 12:23 PM  
**To:** Dalcher, Debra; Lamason, Bill; Culligan, Kevin  
**Subject:** General Discussion  
**When:** Wednesday, January 10, 2018 1:00 PM-1:30 PM (UTC-05:00) Eastern Time (US & Canada)  
**Where:** Ex. 6 - Personal Privacy

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**From:** Lamason, Bill  
**Sent:** Tuesday, January 09, 2018 12:18 PM  
**To:** Dalcher, Debra <[dalcher.debra@epa.gov](mailto:dalcher.debra@epa.gov)>; Culligan, Kevin <[Culligan.Kevin@epa.gov](mailto:Culligan.Kevin@epa.gov)>  
**Subject:** General Discussion

Please join this short conversation with David Harlow on OIAI. We're asking about the removal of the synthetic area source language and he may ask us about other elements. B

-----  
**Subject:** General Discussion  
**Location:** David will call Bill at Ex. 6 - Personal Privacy  
  
**Start:** Wed 1/10/2018 1:00 PM  
**End:** Wed 1/10/2018 1:30 PM  
  
**Recurrence:** (none)  
  
**Meeting Status:** Accepted  
  
**Organizer:** Harlow, David  
**Required Attendees:** Lamason, Bill



**From:** Dalcher, Debra  
**Location:** RTP-OAQPS-Ex. 6 - Personal Privacy-SPPD/Phone-Line/RTP-OAQPS-BLDG-C  
**Importance:** Normal  
**Subject:** OIAI Discussion - Agenda will be Added / Memo w/SJ Edits Attached  
**Start Date/Time:** Mon 1/8/2018 4:00:00 PM  
**End Date/Time:** Mon 1/8/2018 5:00:00 PM  
OIAI.RevisedOIAImemorandum 1 5 2018+ SJJ 1.8.18.docx

Agenda

Wehrum Version of Memo

- Discussion on the content of the memo.

## Ex. 5 - Deliberative Process



## **Ex. 5 - Deliberative Process**

- o Do we need a new docket or can we use the existing one?

**From:** Dalcher, Debra  
**Location:** Call in Ex. 6 - Personal Privacy  
**Importance:** Normal  
**Subject:** OIAI Memo - Supporting Doc Development  
**Start Date/Time:** Wed 12/13/2017 4:30:00 PM  
**End Date/Time:** Wed 12/13/2017 5:00:00 PM

**From:** Dalcher, Debra  
**Location:** Bill's Office, Call in on: Ex. 6 - Personal Privacy  
**Importance:** Normal  
**Subject:** Pre-Peter Meeting to Discuss OIAI Memo - re. Implementation Section (OGC outstanding comments); Added 2007 OIAI Proposal for Reference Purposes  
**Start Date/Time:** Mon 12/4/2017 4:00:00 PM  
**End Date/Time:** Mon 12/4/2017 5:00:00 PM  
OIAI 12.4.17 0800 DD.DOCX  
2007 OIAI FRN proposal.pdf

Meeting to review & discuss outstanding comments/questions from OGC in the implementation Section of the Memo.

Incorporated Scott's minor edits to his comments in the version attached to this meeting notice.

Thank you, Debra

**From:** Tsirigotis, Peter  
**Location:** RTP-OAQPS-D210A-SPPD-IO-only/RTP-OAQPS-BLDG-D/Restricted  
**Importance:** Normal  
**Subject:** OIAI Discussion, Call-in: Ex. 6 - Personal Privacy  
**Start Date/Time:** Mon 12/4/2017 6:15:00 PM  
**End Date/Time:** Mon 12/4/2017 6:45:00 PM

POC: Bill Lamason

**From:** Lamason, Bill  
**Location:** BLO/Kevin to call Ex. 6 - Personal Privacy  
**Importance:** Normal  
**Subject:** Backfill with Kevin on OIAI  
**Start Date/Time:** Mon 11/13/2017 4:15:00 PM  
**End Date/Time:** Mon 11/13/2017 4:30:00 PM

action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: December 18, 2006.

**Donald S. Welsh,**

*Regional Administrator, Region III.*

[FR Doc. E6-22415 Filed 12-29-06; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 63

[EPA-HQ-OAR-2004-0094; FRL-8263-3]

RIN 2060-AM75

### National Emission Standards for Hazardous Air Pollutants: General Provisions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The EPA is proposing amendments to the General Provisions to the national emission standards for hazardous air pollutants (NESHAP). The proposed amendments would replace the policy described in the May 16, 1995 EPA memorandum entitled, "Potential to Emit for MACT Standards—Guidance on Timing Issues," from John Seitz, Director, Office of Air Quality Planning and Standards (OAQPS), to EPA Regional Air Division Directors. The proposed amendments provide that a major source may become an area source at any time by limiting its potential to emit hazardous air pollutants (HAP) to below the major source thresholds of 10 tons per year (tpy) of any single HAP or 25 tpy of any combination of HAP. Thus, under the proposed amendments, a major source can become an area source at any time, including after the first substantive compliance date of an applicable MACT standard so long as it limits its potential to emit to below the major source thresholds. We are also proposing to revise tables in numerous MACT standards that specify the applicability of General Provisions requirements to account for the regulatory provisions we are proposing to add through this notice.

**DATES:** *Comments.* Written comments must be received on or before March 5, 2007.

*Public Hearing.* If anyone contacts EPA requesting to speak at a public hearing by January 23, 2007, a public hearing will be held on February 2, 2007. Persons interested in attending

the public hearing should contact Ms. Lala Alston at (919) 541-5545 to verify that a hearing will be held.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2004-0094, by one of the following methods:

- *www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Email:* [a-and-r-docket@epa.gov](mailto:a-and-r-docket@epa.gov), Attention Docket ID No. EPA-HQ-OAR-2004-0094.
- *Facsimile:* (202) 566-1741, Attention Docket ID No. EPA-HQ-OAR-2004-0094.
- *Mail:* U.S. Environmental Protection Agency, EPA West (Air Docket), 1200 Pennsylvania Ave., NW., Room: 3334, Mail Code: 6102T, Washington, DC 20460, Attention E-Docket ID No. EPA-HQ-OAR-2004-0094.
- *Hand Delivery:* Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Ave., NW., Room: 3334, Mail Code: 6102T, Washington, DC, 20460, Attention Docket ID No. EPA-HQ-OAR-2004-0094. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-HQ-OAR-2004-0094. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov), or e-mail. Send or deliver information identified as CBI only to the following address: Mr. Roberto Morales, OAQPS Document Control Officer, U.S. EPA (C404-02), Attention Docket ID No. EPA-HQ-OAR-2004-0094, Research Triangle Park, NC 27711. Clearly mark the part or all of the information that you claim to be CBI. The [www.regulations.gov](http://www.regulations.gov) Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment

that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the docket are listed in the index. Although listed in the [www.regulations.gov](http://www.regulations.gov) index, some information is not publicly available, (i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material will be publicly available only in hard copy. Publicly available docket materials are available either electronically at [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Air and Radiation Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air and Radiation Docket is (202) 566-1742.

**Note:** The EPA Docket Center suffered damage due to flooding during the last week of June 2006. The Docket Center is continuing to operate. However, during the cleanup, there will be temporary changes to Docket Center telephone numbers, addresses, and hours of operation for people who wish to make hand deliveries or visit the Public Reading Room to view documents. Consult EPA's **Federal Register** notice at 71 FR 38147 (July 5, 2006) or the EPA Web site at <http://www.epa.gov/epahome/dockets.htm> for current information on docket operations, locations and telephone numbers. The Docket Center's mailing address for U.S. mail and the procedure for submitting comments to [www.regulations.gov](http://www.regulations.gov) are not affected by the flooding and will remain the same.

*Public Hearing.* If a public hearing is held, it will be held at the EPA facility complex in Research Triangle Park, NC or an alternate site nearby.

**FOR FURTHER INFORMATION CONTACT:** Rick Colyer, Program Design Group (D205-02), Sector Policies and Programs Division, Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541-5262, electronic mail (e-mail) address, [colyer.rick@epa.gov](mailto:colyer.rick@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**Regulated Entities.** Categories and entities potentially regulated by this action include all major sources regulated under section 112 of the CAA.

**Worldwide Web (WWW).** In addition to being available in the docket, an electronic copy of today's proposal will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of this action will be posted on the TTN's policy and guidance page for newly proposed rules at <http://www.epa.gov/ttn/oarpg>. The TTN provides information and technology exchange in various areas of air pollution control.

## Outline

The information presented in this preamble is organized as follows:

- I. Summary of Proposed Action
- II. Background
- III. Rationale for the Proposed Amendments
  - A. Why is EPA proposing these amendments?
  - B. What is the authority for this action?
  - C. What are the implications of this proposed action?
  - D. What regulatory changes are we proposing?
- IV. Impacts of the Proposed Amendments
- V. Statutory and Executive Order Reviews
  - A. Executive Order 12866: Regulatory Planning and Review
  - B. Paperwork Reduction Act
  - C. Regulatory Flexibility Act
  - D. Unfunded Mandates Reform Act
  - E. Executive Order 13132: Federalism
  - F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
  - G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
  - H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
  - I. National Technology Transfer and Advancement Act

## I. Summary of Proposed Action

Today's proposed amendments would replace an existing EPA policy established in a May 16, 1995, EPA memorandum entitled "Potential to Emit for MACT Standards-Guidance on Timing Issues." See "Potential to Emit for MACT Standards-Guidance on Timing Issues," from John Seitz, Director, Office of Air Quality Planning and Standards, to EPA Regional Air Division Directors. The 1995 policy provides that a major source may become an area source by limiting its potential to emit (PTE) HAP emissions to below major source levels (10 tpy or more of any individual HAP or 25 tpy or more of any combination of HAP), no later than the source's first substantive compliance date under an applicable

NESHAP (also known as a MACT standard). Thus, under the 1995 policy, a source that limits its PTE and thereby attains area source designation by the first compliance date of the MACT is not subject to major source requirements. By contrast, a source that does not have a PTE limit in place by the first substantive compliance date would be subject to major source MACT, regardless of its subsequent HAP emissions. The 1995 policy is generally referred to as EPA's "once in, always in" (OIAI) policy for MACT standards.

The regulatory amendments proposed today, if finalized, would replace the 1995 OIAI policy and allow a major source of HAP emissions to become an area source at any time by limiting its PTE for HAP to below the major source thresholds.

## II. Background

Section 112 of the CAA distinguishes between "major" and "area" sources of HAP. A major source of HAP is defined as " \* \* \* any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tpy or more of any hazardous air pollutant or 25 tpy or more of any combination of hazardous air pollutants." (section 112(a)(1)). An area source is defined as any stationary source of HAP that is not a major source. (section 112(a)(2)). "Hazardous air pollutant" is defined as " \* \* \* any air pollutant listed pursuant to subsection (b)" of section 112. (section 112(a)(6)).

"Potential to emit" is currently defined in the NESHAP General Provisions as " \* \* \* the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the stationary source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable." (40 CFR 63.2).<sup>1</sup>

<sup>1</sup> As explained further below, in *National Mining Association v. EPA*, 59 F. 3d 1351 (D.C. Cir. 1995) (NMA), the D.C. Circuit remanded the definition of "potential to emit" found in 40 CFR 63.2 to the extent it required that physical or operational limits be "federally enforceable." The court did not vacate the rule during the remand. Two additional cases were decided after *National Mining*. In *Chemical Manufacturers Ass'n v. EPA*, (CMA) No. 89-1514, 1995 WL 650098 (D.C. Cir. Sept. 15, 1995), the court, in light of *National Mining*, vacated and remanded to EPA the federal enforceability

The CAA treats the regulation of major sources and area sources differently. Generally, major source categories are listed under section 112(c)(1), while area source categories are listed under section 112(c)(3) following a finding that either the source category presents a threat of adverse human health or environmental effects that warrants regulation under section 112, or the category falls within the purview of CAA section 112(k)(3)(B). See CAA section 112(c)(1) and (3). Standards for major sources are based on the performance of the maximum achievable control technology (MACT) currently employed by the best controlled sources in the industry. Standards for area sources may be based on MACT, but alternatively may be based on generally available control technology (GACT) or generally available management practices that reduce HAP emissions. See CAA section 112(d)(2) and (5).

Major sources can achieve significant HAP emission reductions and emit at levels below the major source thresholds through a variety of mechanisms. In order to be recognized as an area source and thereby avoid the application of major source MACT requirements, however, a major source must limit its potential to emit HAP to ensure that its emissions remain below major source thresholds. See CAA section 112(a)(1) (defining major source HAP thresholds); 40 CFR 63.2 (same).

A significant question that arose early in the development of the MACT program was when major sources may limit their PTE to below the major source thresholds in order to avoid having to comply with major source MACT standards. The EPA issued

component in the potential to emit definition in the PSD and NSR (40 CFR parts 51 and 52) regulations. In *Clean Air Implementation Project v. EPA*, No. 96-1224 1996 WL 393118 (D.C. Cir. June 28, 1996) (CAIP), the court vacated and remanded the federal enforceability requirement in the title V (40 CFR part 70) regulations. The CMA and the CAIP orders were similar in that they contained no independent legal analysis, but rather relied on the *National Mining* decision.

Before any of the above cases were decided, EPA implemented a "transitional" policy to allow sources to rely on state-only enforceable PTE limits. "Options for Limiting the Potential to Emit (PTE) of a Stationary Source Under Section 112 and Title V of the Clean Air Act (Act)" (Jan. 25, 1995), available at <http://www.epa.gov/Region7/programs/artd/air/title5/t5memos/ptememo.pdf>. After the court decisions, EPA extended the transition policy several times. See "Third Extension of January 25, 1995 Potential to Emit Transition Policy" (December 20, 1999), available at <http://www.epa.gov/Region7/programs/artd/air/title5/t5memos/4thext.pdf>. Under the Third Extension, sources can rely on state-only enforceable PTE limits until we finalize our response to the remands. EPA intends to issue a proposed PTE rule in the near future.

guidance on this and related issues on May 16, 1995, in a memorandum from John Seitz, Director of the Office of Air Quality Planning and Standards, to the EPA regional air division directors. The May 1995 memorandum addressed three issues:

- “By what date must a facility limit its potential to emit if it wishes to avoid major source requirements of a MACT standard?”
- “Is a facility that is required to comply with a MACT standard permanently subject to that standard?”
- “In the case of facilities with two or more sources in different source categories: If such a facility is a major source for purposes of one MACT standard, is the facility necessarily a major source for purposes of subsequently promulgated MACT standards?”

In the May 1995 memorandum, EPA took the policy position that the latest date by which a source could obtain area source status by limiting its HAP PTE would be the first substantive compliance date of an applicable MACT standard. For existing sources, this would be no later than 3 years after the effective date of the regulation (which for MACT standards is the date of publication in the **Federal Register**), but could be sooner; for example, some standards for leaking equipment require compliance no later than 6 months after the effective date of the regulation.

Furthermore, in the May 16, 1995, memorandum, EPA stated that once a source was required to comply with a MACT standard, i.e., once the first substantive compliance date had passed without the source limiting its PTE, it must always comply, even though compliance with the standard may reduce HAP emissions from the source to below major source thresholds.

Finally, the May 16, 1995 memorandum provided that a source that is major for one MACT standard would not be considered major for a subsequent MACT standard if the potential to emit HAP emissions were reduced to below major source levels by complying with the first MACT standard.

The 1995 memorandum, on which we did not seek notice and comment, set forth transitional policy guidance and was intended to remain in effect only until such time as the Agency proposed and promulgated amendments to the Part 63 General Provisions. We are today proposing to amend the General Provisions and replace the 1995 policy memorandum.

### III. Rationale for the Proposed Amendments

#### A. Why Is EPA Proposing These Amendments?

EPA issued the May 1995 memorandum in an effort to provide answers to pressing questions raised shortly after the inception of the air toxics program. Since issuance of the memorandum, EPA has received questions concerning the OIAI policy and recommendations to revise the policy.

In August 2000, EPA met with representatives of the State and Territorial Air Pollution Program Administrators and the Association of Local Air Pollution Control Officials (STAPPA/ALAPCO) to explore ways to revise the OIAI policy to promote pollution prevention (P2). The STAPPA/ALAPCO stated its belief that the OIAI policy provides no incentive for sources, after the first substantive compliance date of a MACT standard, to implement P2 measures in order to reduce their emissions to below major source thresholds because there are no benefits to be gained, e.g., no reduced monitoring, recordkeeping, and reporting, and no opportunity to get out of major source requirements. In light of these concerns, the STAPPA/ALAPCO recommended that the Agency revise the OIAI policy to encourage P2. To accommodate some of these P2 concerns, in May 2003 we proposed to amend the part 63 General Provisions (68 FR 26249; May 15, 2003) in the following ways. First, the proposed amendments encourage P2 by allowing an affected source that completely eliminates all HAP emissions after the first compliance date of the MACT standard to submit a request to the Administrator that it no longer be subject to the MACT standard. If the request is approved, the affected source would no longer be subject to the MACT standard provided the source does not resume emitting HAP from the regulated source(s) of emissions. Second, the proposed amendments encourage P2 by allowing an affected source that uses P2 to reduce HAP emissions to the level required by the MACT standard, or below, to request “P2 alternative compliance requirements,” which could include alternative monitoring, recordkeeping and reporting. If the request is approved, the alternative compliance requirements would replace the compliance requirements in the MACT standard.

It is important to understand the differences in applicability between the P2 amendments, and OIAI and today’s proposal revising that policy. The

proposed P2 amendments are targeted at the “affected source” as that term is defined in 40 CFR 63.2. “Affected source” describes the collection of regulated emission points defined as the entity subject to a specific MACT standard. See 40 CFR 63.2. For example, an affected source could be a single production unit or the combination of all production units within a single contiguous area and under common control, or a single emission point or a collection of many related emission points within a single contiguous area and under common control. Each MACT standard defines the “affected source” for regulation.

By contrast, the 1995 OIAI policy and today’s proposed amendments that seek to replace that policy focus on “major sources,” as defined in 40 CFR 63.2. As explained above, major sources are defined by the total amount of HAP emitted from a stationary source or group of stationary sources located within a contiguous area and under common control. See 40 CFR 63.2. A major source can include several different affected sources subject to multiple MACT standards.

The relationship between the proposed P2 amendments and today’s proposal is best illustrated by the following example. Consider a major source that emits 50 tpy total HAP which is comprised of 5 affected sources subject to various MACT. If the Agency finalizes the P2 amendments and one of the affected sources that emitted 15 tpy of HAP eliminated all its HAP emissions, the affected source, if its request is approved by the permitting authority, would no longer be subject to MACT. However, the other four affected sources within the major source would still be subject to their respective MACT because the sources’ combined emissions would be 35 tpy, which exceeds the major source threshold. We are considering the comments received on the proposed P2 amendments and have not yet taken any final action with regard to that proposal.

In addition to the feedback from STAPPA concerning the OIAI policy, EPA has heard from others who have taken the position that the OIAI policy serves as a disincentive for sources to reduce emissions of HAP beyond the levels actually required by an applicable standard. For example, one source whose emissions after applying MACT were still above major source thresholds has significant emissions of one HAP for which the MACT standard does not require reductions. The source has indicated it is willing to substantially reduce that HAP to achieve area source status, but would not do so as long as



the OIAI policy applied and the source could not be redesignated as an area source. Another source, which has maintained actual HAP emissions well below major source levels, discovered its PTE limit (designating it as an area source) was based on an erroneous emission factor. Even though actual emissions have always been below major source levels, its PTE, when recalculated using the correct emission factors, exceeded the major source threshold. In this example, the source did not realize its problem until after the first substantive compliance date, which meant that, under the OIAI policy, the source was subject to the MACT standard.

Moreover, the OIAI policy, as written, does not encourage sources to explore the use of different control techniques, P2, or new and emerging technologies that would result in lower emissions. Thus, under OIAI, the same source could be subject to substantially different requirements based solely on the date by which the source reduced its potential to emit HAP to below the major source thresholds. For example, under OIAI, a major source that is subject to a MACT standard may become an area source prior to the first substantive compliance date of that standard, without reaching MACT levels of emissions reductions. As a result, prior to the first substantive compliance date of a MACT standard, a source emitting 30 tpy of a combination of HAP could reduce emissions by 10 tpy, take a HAP PTE limitation at 20 tpy, emit less than 10 tpy of any one HAP, and become an area source. Such a source would no longer meet the applicability criteria of a potentially applicable major source MACT standard and would, therefore, not be required to comply with that standard. By contrast, if the same source reduced its emissions of HAP to 20 tpy (and didn't emit 10 tpy or more of any single HAP) by complying with an applicable major source MACT standard after the first substantive compliance date of the standard, it would have to continue to comply with the requirements of the major source MACT standard because the first substantive compliance date had passed. The only difference in these two situations is the date on which the source reduced its emissions. As explained below, there is nothing in the CAA that compels the conclusion that a source cannot attain area source status after the first substantive compliance date of a MACT standard.

#### *B. What Is the Authority for This Action?*

As noted above, Congress expressly defined the terms "major source" and "area source" in section 112(a). A "major source" is a source that "emits or has the potential to emit considering controls, in the aggregate," 10 tons per year or more of any HAP or 25 tons per year or more of any combination of HAP, and an "area source" is any stationary source that is not a "major source." CAA section 112(a)(1) and (a)(2).<sup>2</sup> Notably absent from these definitions is any reference to the compliance date of a MACT standard. Rather, Congress defined major source by reference to the amount of HAP the source "emits or has the potential to emit considering controls," and required EPA to determine whether that amount exceeds certain specified levels. 42 U.S.C. 112(a)(1) (emphasis added). Congress placed no temporal limitations on the determination of whether a source emits or has the potential to emit HAP in sufficient quantity to qualify as a major source.

In March 1994, EPA issued final regulations interpreting the term "major source." See 59 FR 12408 (March 16, 1994) (the General Provisions governing the section 112 program).<sup>3</sup> The regulatory definition of "major source" is virtually identical to the statutory definition. Specifically, EPA defined "major source" as "any stationary source or group of stationary sources \* \* \* that emits or has the potential to emit considering controls" at or above major source thresholds. 40 CFR 63.2. EPA, in turn, defined the phrase "potential to emit" that appears in the definition of "major source," as the "maximum capacity of a stationary

source to emit a pollutant under its physical and operational design." *Id.* To give effect to the phrase "considering controls" in the statutory definition of "major source," (CAA section 112(a)(1)), EPA further defined the term "potential to emit" in its regulations as follows:

Any physical or operational limitation on the capacity of the stationary source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable.

40 CFR 63.2.

The Court of Appeals for the District of Columbia Circuit reviewed EPA's definition of "potential to emit" and, in July 1995, remanded the definition to EPA to the extent the definition required that physical or operational limitations be "federally enforceable." *National Mining Ass'n v. EPA*, 59 F.3d 1351 (D.C. Cir. 1995).<sup>4</sup> In remanding the rule, the D.C. Circuit held that "EPA has not explained \* \* \* how its refusal to consider limitations other than those that are 'federally enforceable' serves the statute's directive to 'consider[] controls' when it results in a refusal to credit controls imposed by a state or locality even if they are unquestionably effective." *Id.* at 1363. The court also noted that "[i]t is not apparent why a state's or locality's controls, when demonstrably effective, should not be credited in determining whether a source subject to those controls should be classified as a major or area source." *Id.*; see also *id.* at 1365 ("By no means does that suggest that Congress necessarily intended for state emissions controls to be disregarded in determining whether a source is classified as a 'major' or 'area' source.").

As noted above, EPA is in the process of developing a proposed PTE rule that responds to the Court's remand in *NMA* and, among other things, proposes amendments to the definition of PTE in 40 CFR part 63. EPA anticipates issuing the proposed rule in the near future. See n.1.

Today's proposed rule is wholly consistent with the plain language of section 112(a)(1). Specifically, under today's proposed regulations, any source with a PTE limit that limits HAP emissions to less than the major source thresholds is, by definition, not a "major source" because its "potential to emit considering controls" is less than the identified major source thresholds. 42 U.S.C. 7412(a)(1) (emphasis added). By

<sup>2</sup> In addition to "major sources" and "area sources," Congress identified a third type of source under section 112: electric utility steam generating units ("Utility Units"). See section 112(a)(8). Congress created a special statutory provision for Utility Units in section 112(n)(1)(A). Discussion of that provision is not relevant to this proposal. Today's proposal focuses solely on "major sources" and "area sources." See CAA 112(a)(1), 112(a)(2).

<sup>3</sup> The General Provisions in 40 CFR Part 63 eliminate the repetition of general information and requirements in individual NESHAP subparts by consolidating all generally applicable information in one location. The General Provisions include sections on applicability, definitions, compliance dates, and monitoring, recordkeeping and reporting requirements, among others. In addition, the General Provisions include administrative sections concerning actions that the EPA Administrator must take, such as making determinations of applicability, reviewing applications for approval of new construction, responding to requests for extensions or waivers of applicable requirements, and generally enforcing NESHAP. The General Provisions apply to every facility that is subject to a NESHAP subpart, except where specifically overridden by that subpart.

<sup>4</sup> In that same opinion, the Court otherwise upheld EPA's definition of "major source."

contrast, under the 1995 policy memorandum, a source is treated as a major source in perpetuity even if sometime after the first compliance date of a MACT standard the source no longer meets the statutory definition of "major source" (i.e., the source has a "potential to emit considering controls" less than the major source thresholds). EPA believes that the approach proposed today gives full effect to the statutory definitions and to the distinctions that Congress created between "major" and "area" sources. *Id.* at 1353–54 (discussing differences in requirements affecting major and area sources and recognizing that Congress did not contemplate that all area sources be subject to regulation); *see also* 42 U.S.C. 7412(c)(3), 7412(k)(3)(B).

Moreover, nothing in the structure of the Act counsels against today's proposed approach. Congress defined major and area sources differently and established different requirements for such sources. *See NMA*, 59 F.3d 1353–54. The 1995 policy memorandum creates a dividing line between major and area sources that does not exist on the face of the statute by including a temporal limitation on when a source can become an area source by limiting its PTE.

Furthermore, as noted in the May 1995 OIAI memorandum itself, EPA intended that the memorandum be a transitional policy which would remain in effect only until EPA undertook notice and comment rulemaking, which it is now doing. Nothing precludes the Agency from revising a prior agency position where, as here, we have a principled basis for doing so. As the Supreme Court recently observed:

"An initial agency interpretation is not instantly carved in stone. On the contrary, the agency \* \* \* must consider varying interpretations and the wisdom of its policy on a continuing basis. *Chevron*, *supra* at 863–64, for example, in response to changed factual circumstances, or a change in administrations."

*National Cable & Telecomms. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967 (2005) (citations omitted); *see also American Trucking Ass'n v. Atchison, Topeka & Santa Fe Ry.*, 387 U.S. 397, 416 (1967); *Mobil Oil Corp. v. EPA*, 871 F.2d 149, 152 (D.C. Cir. 1989) ("an agency's reinterpretation of statutory language is nevertheless entitled to deference, so long as the agency acknowledges and explains the departure from its prior views"). We solicit comment on all aspects of today's proposal, including EPA's position that today's proposed approach gives proper effect to the statutory definitions in

section 112(a) and is consistent with the language and structure of the Act.

#### *C. What Are the Implications of This Proposed Action?*

In the 1995 memorandum, EPA stated, as a matter of policy, that without the OIAI policy, facilities could backslide from MACT levels of control and increase their emissions to a level slightly below the major source thresholds. The 1995 memorandum further asserts that if this occurred, the "maximum achievable emissions reductions that Congress mandated for major sources would not be achieved." We agree that Congress mandated that sources that meet the definition of "major source" in section 112(a) be required to comply with MACT, but a source that takes a PTE limit that limits its PTE to below the major source HAP thresholds does not, as explained above, meet the statutory definition of "major source," and therefore should not be subject to the requirements applicable to a major source.

EPA recognizes that some sources in complying with an applicable MACT standard will reduce HAP emissions below the major source thresholds because that is the level of emissions necessary to maintain compliance with the MACT standard. If this rule is finalized, we believe it is unlikely that such sources would, in becoming area sources, increase their current emissions to a level just below the major source thresholds. While this may occur in some instances, it is more likely that sources will adopt PTE limitations at or near their current levels of emissions, which is the level needed to meet the MACT standard(s).<sup>5</sup> This conclusion is based on a number of factors.

First, many sources attaining area source status do so because of the control devices that they installed to meet the MACT standards. Such control systems are designed to operate a certain way and cannot be operated at a level which achieves only a partial emission reduction, i.e., the devices either operate effectively or they do not. Thus, we expect that sources that have attained area source status by virtue of a particular control technology will maintain their current level of emissions.

<sup>5</sup> We recognize that there may be instances where a source will emit at a level that is below the level required by the MACT. EPA cannot mandate that sources emit at such a level. Accordingly, in discussing potential emission increases as the result of today's proposal, we properly limit our discussion to those sources that emit below the major source thresholds because they must do so to meet the MACT standard, not those sources that, for other reasons, emit at a level below the level required by the MACT standard.

Second, several additional programs have been implemented under the CAA since the issuance of the 1995 OIAI memorandum. Specifically, in many cases, sources will maintain the level of emission reduction associated with the MACT standard because that level is needed to comply with other requirements of the Act, such as RACT controls on emissions of volatile organic compounds, which are also HAP. Sources may also need to maintain their current level of control for other reasons, including, for example, for emissions netting and emissions trading purposes.

Third, if this rule is finalized, those sources that seek to maintain area source status will likely take PTE limits at or near their current MACT emission levels to ensure that their emissions remain below the major source thresholds. Sources have no incentive to establish their PTE limit too close to the major source thresholds because repeated or frequent exceedances above the PTE could provide the permitting authority reason to revoke the PTE and bring an enforcement action. 42 U.S.C. 7413(g); *see NMA*, 59 F.3d at 1363 n.20 (noting that a source that claims to have lowered its emissions to below major source thresholds, but has actual emissions that exceed such thresholds, can be subject to sanctions under CAA section 113).

Fourth, permitting authorities will likely encourage emission reduction maintenance and impose more stringent PTE terms and conditions on the source the closer the source's PTE is to the major source thresholds. Such terms and conditions may include shorter compliance periods and perhaps more robust monitoring, recordkeeping, and reporting to ensure that the source does not exceed its PTE.

Finally, many sources that take a PTE limitation to become an area source will ultimately be subject to area source standards issued pursuant to section 112. To date, EPA has issued emission standards for approximately 20 area source categories. Over the next three years, EPA is required to develop area source standards for approximately 50 additional categories. While the level at which those standards will be set is not known at this time, the standards will reflect at least generally available control technology and some may be set at MACT-based levels, which would mean that many sources could be required to maintain their current emission levels. *See, e.g.*, 42 U.S.C. 7412(d)(2), (d)(5), 7412(k)(3)(B).

For all of these reasons, we believe it is unlikely that a source that currently emits at a level below the major source

thresholds as the result of compliance with a MACT standard would increase its emissions in response to this rule. However, even if such increases occur, the increases will likely be offset by emission reductions at other sources that should occur as the result of this proposal. Specifically, this proposal provides an incentive for those sources that are currently emitting above major source thresholds and complying with MACT, to reduce their HAP emissions to below the major source thresholds.

We solicit comment on the issues discussed above. Please include with your comments any relevant factual information and describe the scenarios under which sources, in response to this proposal, would likely increase emissions from the level required by MACT to just below the major source thresholds.

#### *D. What Regulatory Changes Are We Proposing?*

For the reasons discussed above, we believe that the 1995 OIAI policy should be replaced and today are proposing to allow a major source to become an area source at any time by taking a PTE limit on its HAP emissions. Specifically, we are proposing to amend section 63.1 by adding a new paragraph (c)(6). That paragraph would specify that a major source may become an "area source" at any time by restricting its "potential to emit" (PTE) hazardous air pollutants, as that term is defined in 40 CFR Part 63, Subpart A, to below major source thresholds.<sup>6</sup> If a source takes a PTE limit, it will no longer be subject to major source requirements that apply to HAP emissions, subject to certain restrictions described below. The major source requirements to which the source would no longer be subject, include, but are not limited to, compliance assurance monitoring and title V requirements

(assuming the source is not otherwise subject to title V permitting). As an area source complying with its PTE limit, the source would nonetheless be subject to any applicable area source requirements issued pursuant to section 112, and title V if EPA has not exempted the area source category from such requirements.

There are two provisions of the current regulations that are relevant for background purposes: Sections 63.6(b)(7) and 63.6(c)(5). Section 63.6(b)(7) provides that when an area source becomes a major source "by the addition of equipment or operations that meet the definition of new affected source in the relevant standard, the portion of the existing facility that is a new affected source must comply with all requirements of that standard applicable to *new sources*," and the source must comply with the relevant standard upon startup. 40 CFR 63.6(b)(7) (Emphasis added). Section 63.6(c)(5), in turn, states: "Except as provided in section 63.6(b)(7)," an area source that becomes a major source is treated as an existing major source and must comply with applicable MACT standards by the date specified in the standard for area sources that become major sources.<sup>8</sup> For those major source MACT standards that do not specify such a date, the affected source has a period of time to comply that is equivalent to the compliance period specified in the standard for existing affected sources (which is up to three years). 40 CFR 63.6(c)(5). Section 63.6(c)(5) was designed to address existing area sources that have not previously been subject to a MACT standard, but that later increase their emissions and become a major source. Section 63.6(c)(5) only applies, however, where the change that resulted in the increased emissions does not meet the definition of a new affected

source under the relevant major source MACT standard.

As noted above, EPA today proposes to amend section 63.1 to add a new paragraph (c)(6) that would authorize a major source to become an area source at any time by obtaining a PTE limit limiting its HAP emissions to below major source thresholds. EPA proposes, however, the following restrictions.

The first restriction relates to a regulatory provision that we are adding to address the situation where sources switch between major and area source status more than once. Specifically, there may be situations where sources that are major sources as of the first substantive compliance date of the MACT standard later take PTE limitations to attain area source status, and then subsequently seek to switch back to major source status. In these situations, EPA proposes that 40 CFR 63.6(c)(5) not apply, and that, except as noted below, the source must meet the major source MACT standard immediately upon that standard again becoming applicable to the source. See proposed regulations at 40 CFR 63.1(c)(6)(i).<sup>9</sup> In this scenario, existing affected sources at the major source were previously subject to the MACT standard. The affected sources therefore should be able to comply with the standard immediately upon the standard again becoming applicable to them. *Id.*

To date, we have identified one set of circumstances where additional time would be necessary for the source to comply with the major source MACT. Specifically, there are situations where major source MACT rules may be amended and either become more stringent or apply to additional emission points or additional HAP. For example, under section 112(d)(6) MACT standards must be reviewed every 8 years and revised if necessary. If revisions issued pursuant to section 112(d)(6) increase the stringency of the standards or revise the standards such that they apply to additional emission points or HAP, it would be necessary to allow existing sources sufficient time to come into compliance with the new requirements. The revision of a MACT standard pursuant to section 112(d)(6) is only one example of a situation where a MACT rule may be revised. MACT rules are also amended for other reasons, including as the result of settlements resolving pending litigation over a standard. Any type of rule amendment situation where the

<sup>6</sup> We recognize that there may be sources that were major sources as of the first substantive compliance date of a MACT standard that, by complying with non-section 112 CAA requirements, became area sources for HAP emissions. In this instance, EPA proposes that the source obtain a PTE limit for its HAP emissions to ensure that those emissions remain below major source thresholds.

<sup>7</sup> Some individual MACT standards in Part 63 provide sources the opportunity to become area sources not by limiting total mass emissions directly, but by limiting material use or by taking other measures, which in turn, correlate to emissions below major source levels (e.g., see subpart KK, Printing and Publishing and subpart JJ, Wood Furniture Manufacturing Operations (limiting HAP usage to below major source thresholds). We recommend that sources refer to the applicable NESHAP for guidance in determining whether the source meets the major source thresholds. See 40 CFR 63.2 (defining "potential to emit" by reference to physical or operational limitations, including, for example, "restrictions on hours of operation, or on the type or amount or material combusted, stored, or processed").

<sup>8</sup> EPA explained the purpose of section 63.6(b)(7) in the preamble to the General Provisions as follows:

Section 63.6(b)(7) states that an unaffected new area source that increases its emissions of (or its potential to emit) HAP such that it becomes a major source, must comply with the relevant emission standard immediately upon becoming a major source. [Under section 63.6(b)(7), a]n unaffected existing area source that increases its emissions (or its potential to emit) such that it becomes a major source, must comply by the date specified for such a source in the standard. If such a date is not specified, the source would have an equivalent period of time to comply as the period specified in the standard for other existing sources. However, if the existing area source becomes a major source by the addition of a new affected source, or by reconstructing, the portion of the source that is new or reconstructed is required to comply with the standard's requirements for new sources.

59 FR 12408, 12413 (Mar. 16, 1994).

<sup>9</sup> The new proposed 40 CFR 63.1(c)(6)(i), like section 63.6(c)(5), is subject to the provisions of 40 CFR 63.6(b)(7).

amendments substantively modify the MACT could necessitate additional time for compliance. We are thus proposing that sources that switch status from major source to area source and then revert back to major source status, be allowed additional time for compliance if the major source standard has changed such that the source must undergo a physical change, install additional controls and/or implement new control measures. We propose that such sources have the same period of time to comply with the revised MACT standard as is allowed for existing sources subject to the revised standard. We solicit comment on this proposed compliance time-frame and whether the proposed regulatory text adequately captures the intended exception.

We are proposing the immediate compliance rule, with the above-noted exception, because we believe that in most cases, sources achieve and maintain area source status by operating the controls they used to meet the MACT standard. Therefore, a source that reverts to major source status should be in a position to comply immediately with the MACT standard. Sources may, in addition to, or in lieu of, operating controls, reduce their production level or hours of operation, but regardless of the means employed to attain area source status, we believe that the sources will likely not be removing the controls used to meet the MACT standard. We recognize that some MACT standards allow alternative compliance options, such as the use of low HAP materials, but these options should continue to be available for the affected source. Moreover, the addition of equipment or process units to an existing affected source should not change the source's ability to meet the MACT standard upon startup of the new equipment or unit because the equipment or process units should be accompanied by either a tie-in to existing controls or installation of new controls. See also 40 CFR 63.6(b)(7) (applying to new affected sources). We solicit comment on whether our assumptions, as stated in this paragraph, are correct.

More specifically, we solicit comment on the appropriateness of the proposed immediate compliance rule and whether such rule should be finalized. If it should be maintained, we solicit comment on whether there are other situations, in addition to the one noted above, that would necessitate an extension of the time period for compliance with the MACT standards. We further solicit comment on whether we should instead allow all sources that revert back to major source status a

specific period of time in which to comply with the MACT standard, which would be consistent with the approach provided for in 40 CFR 63.6(c)(5). If we pursue this approach in the final rule, we request comment on whether we should provide the same time periods as are already provided for in 40 CFR 63.6(c)(5), or whether a different time period is appropriate and why. To the extent a commenter proposes a compliance time-frame, we request that the commenter explain the basis for providing that time-frame. Thus, depending on the comments received and the factual circumstances identified, we will consider (1) not finalizing the immediate compliance, with exceptions, approach, and instead providing all sources that revert back to major source status a defined period of time to comply consistent with the provisions of 40 CFR 63.6(c)(5); and (2) retaining the proposed immediate compliance rule, and adopting additional exceptions to that rule, if we receive persuasive and concrete scenarios that we believe would warrant allowing additional time to comply with a previously applicable MACT standard.<sup>10</sup> If we pursue the former approach, we would likely amend 40 CFR 63.6(c)(5). If we pursue the latter approach and retain the immediate compliance rule, but create exceptions in addition to the one noted above, there are two ways to implement the exceptions: Through a case-by-case compliance extension request process or by identifying in the final rule specific exceptions to the immediate compliance rule and providing a time period for compliance for each identified exception. Under the case-by-case approach, the permitting authority could grant limited additional time for compliance upon a specific showing of need. A case-by-case compliance extension request process would call for the owners or operators of sources to submit to the relevant permitting authority a request that (i) identifies the specific additional time needed for compliance, and (ii) explains, in detail, why the source needs additional time to come into compliance with the MACT standard. The permitting authority would review the request and could either approve it in whole, or in part

(i.e., by specifying a different compliance timeframe or allowing different timeframes for different parts of the affected sources), or deny the request.

We envision that a request for a compliance extension, if such an option is provided in the final rule, would ordinarily be made in the context of the title V permit application or an application to modify an existing title V permit. Any compliance extension, if granted, would be memorialized in the title V permit. Another option sources may consider is seeking approval to include in their title V permit alternative operating scenarios that address the source's different projected operating scenarios. By incorporating alternative operating scenarios into the permit, the source could avoid having to reopen and revise the permit if it chooses to switch source status and again become a major source.

If we retain the proposed immediate compliance rule with exceptions, we will also consider the option of including in the final rule defined compliance extension time-frames for defined factual scenarios, as we have done for the exception described above. Under this approach, if a source satisfies the criteria identified in the final rule, it would automatically be afforded the defined extension of time to comply with the MACT standard upon the source again becoming subject to MACT. This extension approach would be useful if there are specific factual scenarios that affect a broad number of sources, because defining the compliance extension time-frame in the final rule eliminates the burden on permitting authorities associated with the case-by-case approach.

In submitting your comments on the above-noted issues and proposed section 63.6(c)(6), please identify, with specificity, the factual circumstances that would warrant a compliance extension, explain why the source would need the extension under the circumstances identified, and why the source could not comply with the standard immediately upon returning to major source status given the identified circumstances. We specifically solicit comment on our discussion above as to the mechanics of obtaining a compliance extension if a case-by-case approach is finalized, including, for example, the type of information requested from the source seeking the proposed compliance extension, the permit vehicle used to obtain the extension, and any limitations on

<sup>10</sup> The new proposed regulatory provision at 40 CFR 63.1(c)(6)(i) is subject to the provisions of 40 CFR 63.6(b)(7). Thus, if a source adds a piece of equipment which results in emissions at levels in excess of the major source thresholds, and that equipment meets the definition of a new affected source under the relevant MACT standard, the source is subject to the provisions of 40 CFR 63.6(b)(7) and must meet the requirements for new sources in the relevant major source MACT standard including compliance at startup.

providing extensions.<sup>11</sup> We further solicit comment on the approach of providing a compliance extension in the final rule for certain defined factual scenarios. With regard to this approach, we solicit comment on the nature of the scenario that would warrant such an extension and the amount of additional time that would be needed to comply with the MACT standard and why such a period of time is needed to comply.

The second restriction to the new proposed regulatory provision at 40 CFR 63.1(c)(6) concerns those major sources that take PTE limits to become area sources and thereby become subject to area source standards in 40 CFR part 63. We propose that a major source with affected sources subject to a major source MACT standard that switches to area source status where the EPA has established area source standards for the same affected source would have to comply immediately with those area source standards if the first substantive compliance date has passed or would have to comply by the first substantive compliance date if it has not passed. Because the area source standard is not likely to be more stringent than the major source MACT standard that the source was already meeting, the source likely will not need additional compliance time after the source status change. However, if different emission points are controlled or different controls are necessary to comply with the area source standard or other physical changes are needed to comply with the standard, additional time, not to exceed 3 years, may be granted by the permitting authority if adequate support for the additional time is provided by the source.<sup>12</sup>

Accordingly, EPA is proposing to add 40 CFR 63.1(c)(6)(ii), which provides that a major source that subsequently becomes an area source by limiting its PTE must meet all applicable area source requirements in Part 63

immediately upon the effective date of the permit containing the PTE limits, provided the first compliance date for the area source standard has passed. We further propose that if a source (or a portion thereof) must undergo a physical change or install additional control equipment to meet the applicable area source standard, the source may submit to the relevant permitting authority a request that (i) identifies the specific additional time needed for compliance (i.e., such request cannot exceed three years) with the area source standard, and (ii) explains, in detail, why the additional time is necessary to comply with the standard. The proposed new regulatory provision—40 CFR 63.1(c)(6)(ii)—is delegable. See generally 42 U.S.C. 7412(l); 40 CFR Subpart E. A permitting authority may approve, in whole or in part, or deny the request.

The proposed new regulatory provision, 40 CFR 63.1(c)(6)(ii), is analogous to 40 CFR 63.6(c)(5), which is briefly described above. We promulgated 40 CFR 63.6(c)(5) as part of the General Provisions, because we recognized a gap in the statute. Specifically, the statute is silent as to how to address sources that are existing area sources at the time the MACT standard is promulgated and that, at some later date, become major sources subject to the MACT standard. Section 63.6(c)(5) fills this particular gap. Similarly, the statute does not address the scenario where a major source becomes an area source and the compliance date for the area source standard has already passed and modifications to the source are needed to achieve compliance with the standard. EPA today proposes 40 CFR 63.1(c)(6)(ii) to address this situation. Section 112(i)(3) does not directly address either of these identified scenarios. Rather, it directly addresses those sources that are existing affected sources as of the date the emission standard is promulgated. See CAA section 112(i)(3) (“After the effective date of any emission standard \* \* \* promulgated under this section and *applicable to a source*, no person may operate such source in violation of such standard \* \* \* except in the case of an existing source,” EPA shall provide a compliance date that provides for compliance as expeditiously as practicable, but no later than 3 years “*after the effective date of the standard.*”) (emphasis added). Moreover, the new proposed regulatory provision, 40 CFR 63.1(c)(6)(ii), is consistent with CAA section 112(i)(3), because it requires sources to comply

immediately with the area source standard upon the effective date of the permit containing the PTE limit (which is the permit that provides area source status), and authorizes additional time only if the Permitting Authority determines that such time is appropriate based on the facts and circumstances. In any event, any extension of time provided pursuant to proposed 40 CFR 63.1(c)(6)(ii) cannot exceed three years.

Under today’s proposed regulations, sources that reduce their emission levels and obtain a PTE HAP limit below major source thresholds must meet that limit and all associated conditions, as specified in the relevant permit, on the effective date of the permit. Prior to the effective date of the permit, the source must continue to comply with the relevant major source MACT standard(s) and other conditions in its title V permit. Of course, permitting authorities may deny a request to adopt area source status where the source has changed its status more than once, if, in the opinion of the permitting authority, these actions are an indication that the restrictions on PTE are, in practice, ineffective.

To the extent an area source standard applies, the compliance date for that standard has passed, and the source needs a compliance extension, the source must apply for and obtain that compliance extension before becoming subject to the area source standard; otherwise, the source will be in violation of the area source standard. We solicit comment on the proposed case-by-case compliance extension date approach, including, for example, the type of information that should be requested from the source seeking the proposed compliance extension, the permit vehicle used to obtain the extension, and whether the limitations proposed above (i.e., the affected source must undergo a physical change or install additional control equipment in order to meet the area source standard) are appropriate. See proposed regulations at 40 CFR 63.1(c)(6)(ii). We also solicit comment generally on the mechanics of obtaining the compliance extension and the appropriate vehicle for requesting the compliance extension. If the area source category is not exempted from the requirements of title V, the request for a compliance extension can be made in the context of the title V permit process. If, however, the area source category at issue is exempt from title V, the source could submit its compliance date extension request to the permitting authority issuing its PTE HAP limitation, provided that the permitting authority is the same State authority that has been

<sup>11</sup> Some major sources that switch to area source status may, as an area source, no longer be subject to title V requirements and therefore apply to their permitting authority to terminate their title V permits and obtain a PTE limit through another permit vehicle. Presumably, such sources would have their title V permit terminated at the same time the non-title V permit limiting their PTE becomes effective. If, however, the area source reverts back to major source status, the source will once again have to obtain a title V permit. The source would also have to terminate the non-title V permit containing its PTE limit to allow it to emit at major source levels. Once the HAP PTE limitation no longer applies to the source, the source must comply with applicable major source MACT standards or have taken appropriate steps to apply for a compliance extension.

<sup>12</sup> The existing regulations do not address the issue of compliance time-frames for sources that switch from major source status to area source status. See CAA section 112(i)(3), 40 CFR 63.6(c)(5).



delegated authority to implement the Section 112 program. We further solicit comment on whether the proposed compliance date extension provision in 40 CFR 63.1(c)(6)(ii) should be extended to major sources that become area sources only a few months prior to the compliance date of an applicable area source standard, to the extent the source needs additional time to comply.

We solicit comment on all aspects of the proposed new regulatory provisions at 40 CFR 63.1(c)(6)(i) and (ii). For either of the two situations described above (*i.e.*, where a source switches from major, to area, and back to major source status, and where a source switches from major to area source status), a source must notify the Administrator under § 63.9(b) of any standards to which it becomes subject.

The final restriction relevant to the regulations we are proposing to add to 40 CFR 63.1 relates to an enforcement issue. See proposed regulations at 40 CFR 63.1(c)(6)(iii). Specifically, we do not intend to allow major sources that are subject to enforcement investigations or enforcement actions to avoid the results of such investigations or the consequences of such actions by becoming area sources. Although sources that are the subject of an investigation or enforcement action may still seek area source status for purposes of future applicability, they are not absolved of any previous or pending violations of the CAA that occurred while they were a "major source," and the source must bear the consequences of any enforcement action or remedy imposed upon it, which could include fines or imposition of additional emission reduction requirements. Accordingly a source cannot use its new area source status as a defense to MACT violations that occurred while the source was a major source. Similarly, becoming a major source does not absolve a source subject to an enforcement action or investigation for area source violations or infractions from the consequences of any actions occurring when the source was an area source.

Finally, we are proposing to amend each of the General Provisions applicability tables contained within most subparts of part 63 to add a reference to new paragraph 63.1(c)(6). In addition, in reviewing several of the MACT standards, we identified one general category of regulatory provisions that may need revision and we solicit comment on whether any revisions are in fact necessary. This category of provisions addresses the date by which a major source can become an area source. The provisions that we have

identified to date, however, all include the specific compliance date of the standard, which in all instances has passed. See *e.g.*, 40 CFR 63.787(b)(iv) ("Existing major sources that intend to become area sources by the December 18, 1997 compliance date may choose to \* \* \*"). Thus, although these regulatory provisions reflect the 1995 OIAI policy that this proposed rule seeks to replace, the provisions themselves have no current effect because the compliance date specified in the regulations has passed. In light of this, we are not proposing regulatory changes to these provisions, but we solicit comment on whether such changes are necessary. We further solicit comment on whether there are any other regulatory provisions in any of the individual subparts that would warrant modification or clarification consistent with today's proposal.

#### IV. Impacts of the Proposed Amendments

The environmental, economic, and energy impacts of the proposed amendments cannot be quantified without knowing which sources will avail themselves of the regulatory provisions proposed in this rule and what methods of HAP emission reductions will be used. It is unknown how many sources would choose to take permit conditions that would limit their PTE to below major source levels. Within this group it also is not known how many sources may increase their emissions from the major source MACT level (assuming the level is below the major source thresholds). Similarly we cannot identify or quantify the universe of sources that would decrease their HAP emissions to below the level required by the NESHAP to achieve area source status. We believe that many, if not most, sources that could reduce HAP emissions to area source levels prior to the first substantive compliance date of a MACT standard have already done so. We solicit comment on potential impacts, specifically the number of potential and likely sources that may avail themselves of the approach provided for in today's proposal and additional emission reductions that may be achieved or increases that may occur; please provide any analysis in your comment. There is no requirement that sources avail themselves of the approach proposed today, and each source should assess its own situation to determine whether the additional costs associated with achieving additional emission reductions is beneficial to the source, in exchange for becoming an area source and realizing the associated benefits.

#### V. Statutory and Executive Order Reviews

##### A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a "significant regulatory action" because it raises novel legal or policy issues arising out of legal mandates. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

##### B. Paperwork Reduction Act

The proposed amendments would impose no information collection requirements. Sources opting to become area sources may experience some reduction in reporting and recordkeeping requirements, as they would no longer be subject to major source MACT requirements. Any changes in reporting or recordkeeping would be done through the permitting mechanisms of the responsible permitting authority. It is not possible to identify how many sources would choose to employ these provisions, nor is it possible to determine what, if any changes, to reporting and recordkeeping would be made. Permitting authorities may, in fact, choose to establish the NESHAP provisions themselves as the PTE limits and change little or nothing.

Furthermore, approval of an ICR is not required in connection with these proposed amendments. This is because the General Provisions do not themselves require any reporting and recordkeeping activities, and no ICR was submitted in connection with their original promulgation or their subsequent amendment. Any recordkeeping and reporting requirements are imposed only through the incorporation of specific elements of the General Provisions in the individual MACT standards which are promulgated for particular source categories which have their own ICRs.

The Office of Management and Budget has previously approved the information collection requirements contained in the existing regulations of 40 CFR part 63 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* A copy of the OMB approved Information Collection Request (ICR) for any of the existing regulations may be obtained from Susan Auby, Collection Strategies Division; U.S. EPA (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460, or by calling (202) 566-1672.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

#### *C. Regulatory Flexibility Act*

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any proposed rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

For purposes of assessing the impacts of the proposed amendments on small entities, small entity is defined as: (1) A small business as defined in each applicable subpart; (2) a government jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and that is not dominant in its field.

After considering the economic impacts of the proposed amendments on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analysis is to identify and address regulatory alternatives which minimize any

significant economic impact on a substantial number of small entities (5 U.S.C. 603–604). Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

Small entities that are subject to MACT standards would not be required to take any action under this proposal; any action a source takes to become reclassified as an area source would be voluntary. In addition, we expect that any sources using these provisions will experience cost savings that will outweigh any additional cost of achieving area source status.

The only mandatory cost that would be incurred by air pollution control agencies would be the cost of reviewing sources' permit applications for area source status and issuing permits. No small governmental jurisdictions operate their own air pollution control agencies, so none would be required to incur costs under the proposal. In addition, any costs associated with application reviews and permit issuance are expected to be offset by reduced agency oversight obligations for sources that no longer must meet major source MACT requirements.

Based on the considerations above, we have concluded that the proposed amendments will relieve regulatory burden for all affected small entities. Nevertheless, we continue to be interested in the potential impacts of the proposed amendments on small entities and welcome comments on issues related to such impacts.

#### *D. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with “Federal mandates” that may result in expenditures by State, local, and tribal governments, in aggregate, or by the private sector, of \$100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives

of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that the proposed amendments do not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. Sources subject to MACT standards would not be required to take any action under this proposal, including sources owned or operated by State, local, or tribal governments; the provisions in these proposed amendments are strictly voluntary. In addition, the proposed amendments are expected to result in reduced burden on any source that achieves area source status in accord with them. Under the proposed amendments, a State, local, or tribal air pollution control agency to which we have delegated section 112 authority would be required to review permit applications and make modifications to the permit as necessary. However, most applications would not be lengthy or complicated, and costs would not approach the \$100 million annual threshold. In addition, any costs associated with these reviews are expected to be offset by reduced agency oversight obligations for sources that no longer must meet major source requirements. Thus, the proposed amendments are not subject to the requirements of sections 202 and 205 of UMRA. EPA has determined that the proposed amendments contain no regulatory requirements that might significantly or uniquely affect small governments because they contain no requirements that apply to such governments or impose obligations upon them. Thus, the proposed

amendments are not subject to the requirements of section 203 of the UMRA.

#### *E. Executive Order 13132: Federalism*

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

These proposed amendments do not have federalism implications. They will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Although the proposed amendments would require State air pollution control agencies to review and modify permits as appropriate, the burden on States will not be substantial. In addition, we expect that the overall effect of the proposed amendments will be to reduce the burden on State agencies as their oversight obligations become less demanding for sources no longer subject to major source MACT requirements. Thus, Executive Order 13132 does not apply to these proposed amendments.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on these proposed amendments from State and local officials.

#### *F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes."

These proposed amendments do not have tribal implications, as specified in Executive Order 13175. They will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Any tribal government that owns or operates a source subject to MACT standards would not be required to take any action under this proposal; the provisions in the proposed amendments would be strictly voluntary. In addition, achieving area source status would result in reduced burden on any source that no longer must meet major source requirements. Under the proposed amendments, a tribal government with an air pollution control agency to which we have delegated section 112 authority would be required to review permit applications and to modify permits as necessary. However, such reviews are not expected to be lengthy or complicated, so the effects will not be substantial. In addition, any costs associated with these reviews are expected to be offset by reduced agency oversight obligations for sources no longer required to meet major source requirements. Thus, Executive Order 13175 does not apply to these proposed amendments.

However, in the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and Indian tribes, EPA specifically solicits comment on the proposed amendments from tribal officials.

#### *G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to regulatory actions that are based on health or safety risks, such that the analysis required under

section 5-501 of the Executive Order has the potential to influence the regulation. These proposed amendments are not subject to Executive Order 13045 because they are not "economically significant" and because all MACT standards governed by the General Provisions are based on technology performance and not on health or safety risks.

#### *H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

The proposed amendments are not a "significant energy action" as defined in Executive Order 13211 (66 FR 28355, May 22, 2001) because they are not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we believe that the proposed amendments are not likely to have any adverse energy impacts.

#### *I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995, Public Law 104-113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

These proposed amendments do not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards. EPA welcomes comments on this aspect of the proposed amendments, and specifically invites the public to identify potentially applicable voluntary consensus standards and to explain why such standards should be used in the proposed amendments.

#### **List of Subjects in 40 CFR Part 63**

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: December 21, 2006.

**Stephen L. Johnson,**  
Administrator.

For the reasons cited in the preamble, title 40, chapter 1 of the Code of Federal



Regulations is proposed to be amended as follows:

#### PART 63—[AMENDED]

1. The authority citation of part 63 continues to read as follows:

**Authority:** 42 U.S.C. 7401, *et seq.*

#### Subpart A—[Amended]

2. Section 63.1 is amended by adding a new paragraph (c)(6) to read as follows:

##### § 63.1 Applicability.

\* \* \* \*

(c) \* \* \*

(6) A major source may become an area source at any time by obtaining a permit limiting its potential to emit (PTE) hazardous air pollutants, as defined in this subpart, to below the major source thresholds established in 40 CFR 63.2, subject to the restrictions in paragraphs (c)(6)(i) through (iii) of this section. Until the permit containing the PTE limit becomes effective, the source remains subject to major source requirements. After the permit containing the PTE limit becomes effective, the source is subject to any applicable requirements for area sources.

(i)(A) The owner or operator of a major source subject to standards under this part that subsequently becomes an area source by limiting its PTE to below major source thresholds, and then later again becomes a major source by increasing its emissions to the major source thresholds or above, must comply immediately with the major source requirements of this part upon becoming a major source, notwithstanding § 63.6(c)(5), except as noted in paragraph (i)(B) below. Such

major sources must comply with the notification requirements of § 63.9(b).

(B) If, as described in paragraph (i)(A), a source again becomes subject to the standard for major sources, that standard has been revised since the source was last subject to the standard and, in order to comply, the source must undergo a physical change, install additional controls and/or implement new control measures, the source will have up to the same amount of time to comply as the amount of time allowed for existing sources subject to the revised standard.

(ii) A major source that becomes an area source by limiting its PTE must meet all applicable area source requirements promulgated under this part immediately upon the effective date of the permit containing the PTE limits, provided the first substantive compliance date for the area source standard has passed, except that the permitting authority may grant additional time, up to 3 years, if the source must undergo physical changes or install additional control equipment in order for the source (or portion thereof) to comply with the applicable area source standard and the permitting authority determines that such additional time is warranted based on the record. A source seeking additional compliance time must submit a request to the permitting authority that identifies the amount of additional time requested for compliance and provides a detailed justification supporting the requested. Area sources not previously subject to area source standards must comply with the notification requirements of § 63.9(b).

(iii) Becoming an area source does not absolve a source subject to an enforcement action or investigation for

major source violations or infractions from the consequences of any actions occurring when the source was major. Becoming a major source does not absolve a source subject to an enforcement action or investigation for area source violations or infractions from the consequences of any actions occurring when the source was an area source.

\* \* \* \*

3. Section 63.6 is amended by revising the second sentence in paragraph (c)(5) to read as follows:

##### § 63.6 Compliance with standards and maintenance requirements.

\* \* \* \*

(c) \* \* \*

(5) \* \* \* Except as provided in § 63.1(c)(6)(i) such sources must comply by the date specified in the standards for existing area sources that become major sources. \* \* \*

\* \* \* \*

4. Section 63.9 is amended by adding a sentence to the end of paragraph (b)(1)(ii) to read as follows:

##### § 63.9 Notification requirements.

\* \* \* \*

(b) \* \* \*

(1)(i) \* \* \*

(ii) \* \* \* Area sources previously subject to major source requirements that again become major sources are also subject to the notification requirements of this paragraph.

\* \* \* \*

#### Subpart F—[Amended]

5. Table 3 to subpart F of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 3 TO SUBPART F OF PART 63—GENERAL PROVISIONS APPLICABILITY TO SUBPARTS F, G, AND H<sup>A</sup> TO SUBPART F

Reference	Applies to subparts F, G, and H	Comment
63.1(c)(6) .....	Yes.	

<sup>A</sup> Wherever subpart A specifies "postmark" dates, submittals may be sent by methods other than the U.S. Mail (e.g., by fax or courier). Submittals shall be sent by the specified dates, but a postmark is not necessarily required.

\* \* \* \*

#### Subpart N—[Amended]

6. Table 1 to subpart N of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 1 TO SUBPART N OF PART 63—GENERAL PROVISIONS APPLICABILITY TO SUBPART N

General Provisions Reference	Applies to subpart N	Comment
* * *	* * *	* * *
63.1(c)(6) .....	Yes.	
* * *	* * *	* * *

**Subpart O—[Amended]****§ 63.360 Applicability.**

7. Table 1 to § 63.360 is amended by adding an entry for § 63.1(c)(6) to read as follows:

(a) \* \* \*

TABLE 1 OF SECTION 63.360.—GENERAL PROVISIONS APPLICABILITY TO SUBPART O

Reference	Applies to sources using 10 tons in subpart O <sup>a</sup>	Applies to sources using 1 to 10 tons in subpart O <sup>a</sup>	Comment
* * *	* * *	* * *	* * *
63.1(c)(6) .....	Yes.		
* * *	* * *	* * *	* * *

<sup>a</sup> See definition.

\* \* \*

**Subpart R—[Amended]**

8. Table 1 to subpart R of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 1 TO SUBPART R OF PART 63.—GENERAL PROVISIONS APPLICABILITY TO SUBPART R

Reference	Applies to subpart R	Comment
* * *	* * *	* * *
63.1(c)(6) .....	Yes.	
* * *	* * *	* * *

**Subpart S—[Amended]**

9. Table 1 to subpart S of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 1 TO SUBPART S OF PART 63.—GENERAL PROVISIONS APPLICABILITY TO SUBPART S<sup>A</sup>

Reference	Applies to subpart S	Comment
* * *	* * *	* * *
63.1(c)(6) .....	Yes.	
* * *	* * *	* * *

<sup>a</sup> Wherever subpart A specifies "postmark" dates, submittals may be sent by methods other than the U.S. Mail (e.g., by fax or courier). Submittals shall be sent by the specified dates, but a postmark is not required.

* * *	<b>Subpart T—[Amended]</b>	<b>Appendix B to Subpart T of Part 63— General Provisions Applicability to Subpart T</b>
	10. Appendix B to subpart T of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:	

Reference	Applies to subpart T		Comments
	BCC	BVI	
* * *	*	*	*
63.1(c)(6) .....	Yes .....	Yes.	
* * *	*	*	*

* * *	<b>Subpart U—[Amended]</b>	Table 1 to subpart U of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:
	11. Table 1 to subpart U of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:	

TABLE 1 TO SUBPART U OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART U AFFECTED SOURCES

Reference	Applies to subpart U		Explanation
* * *	*	*	*
63.1(c)(6) . . .	Yes.		
* * *	*	*	*

* * *	<b>Subpart W—[Amended]</b>	12. Table 1 to subpart W of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:
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TABLE 1 TO SUBPART W OF PART 63.—GENERAL PROVISIONS APPLICABILITY TO SUBPART W

Reference	Applies to subpart W			Comment
	BLR	WSR	WSR alternative standard, and BLR equipment leak standard (40 CFR part 63, subpart H)	
* * *	*	*	*	*
§ 63.1(c)(6) .....	Yes .....	Yes .....	Yes.	
* * *	*	*	*	*

<b>Subpart Y—[Amended]</b>	<b>§ 63.560 Applicability and designation of affected sources.</b>
13. Table 1 of § 63.560 is amended by adding an entry for § 63.1(c)(6) to read as follows:	* * *

TABLE 1 OF § 63.560.—GENERAL PROVISIONS APPLICABILITY TO SUBPART Y

Reference	Applies to affected sources in subpart Y		Comment
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TABLE 1 OF § 63.560.—GENERAL PROVISIONS APPLICABILITY TO SUBPART Y—Continued

Reference	Applies to affected sources in subpart Y				Comment	
* * *	*	*	*	*	*	*
63.1(c)(6) .....	Yes.					
* * *	*	*	*	*	*	*

**Subpart AA—[Amended]**

14. Appendix A to subpart AA of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

40 CFR citation	Requirement	Applies to subpart AA		Comment	
* * *	*	*	*	*	*
63.1(c)(6) .....	Yes.				
* * *	*	*	*	*	*

**Subpart BB—[Amended]**

15. Appendix A to subpart BB of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

**Appendix A to Subpart BB of Part 63—  
Applicability of General Provisions (40  
CFR Part 63, Subpart A) to Subpart BB**

40 CFR citation	Requirement	Applies to subpart BB		Comment	
* * *	*	*	*	*	*
63.1(c)(6) .....	Yes.				
* * *	*	*	*	*	*

**Subpart CC—[Amended]**

16. Table 6 to Appendix of subpart CC of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

**Appendix to Subpart CC of Part 63—  
Tables**

\* \* \* \* \*

TABLE 6.—GENERAL PROVISIONS APPLICABILITY TO SUBPART CC<sup>A</sup>

Reference	Applies to subpart CC				Comment	
* * *	*	*	*	*	*	*
63.1(c)(6) .....	Yes.					
* * *	*	*	*	*	*	*

<sup>a</sup> Wherever subpart A specifies "postmark" dates, submittals may be sent by methods other than the U.S. Mail (e.g., by fax or courier). Submittals shall be sent by the specified dates, but a postmark is not required.

\* \* \* \* \*

**Subpart DD—[Amended]**

17. Table 2 to subpart DD of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

**TABLE 2 TO SUBPART DD OF PART 63.—APPLICABILITY OF PARAGRAPHS IN SUBPART A OF THIS PART 63—GENERAL PROVISIONS TO SUBPART DD**

Subpart A reference	Applies to subpart DD	Explanation
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TABLE 2 TO SUBPART DD OF PART 63.—APPLICABILITY OF PARAGRAPHS IN SUBPART A OF THIS PART 63—GENERAL PROVISIONS TO SUBPART DD—Continued

Subpart A reference	Applies to subpart DD	Explanation
* * *	*	*
63.1(c)(6) .....	Yes.	*
* * *	*	*

\* \* \*

**Subpart EE—[Amended]**

18. Table 1 to subpart EE of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 1 TO SUBPART EE OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART EE

Reference	Applies to subpart EE	Comment
* * *	*	*
63.1(c)(6) .....	Yes.	*
* * *	*	*

**Subpart GG—[Amended]**

19. Table 1 to subpart GG of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 1 TO SUBPART GG OF PART 63.—GENERAL PROVISIONS APPLICABILITY TO SUBPART GG

Reference	Applies to affected sources in subpart GG	Comment
* * *	*	*
63.1(c)(6) .....	Yes.	*
* * *	*	*

**Subpart HH—[Amended]****Appendix to Subpart HH of Part 63—Tables**

20. Table 2 of Appendix to subpart HH of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 2 TO SUBPART HH OF PART 63.—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART HH

General provisions reference	Applies to subpart HH	Explanation
* * *	*	*
§ 63.1(c)(6) .....	Yes.	*
* * *	*	*

**Subpart JJ—[Amended]**

21. Table 1 to subpart JJ of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 1 TO SUBPART JJ OF PART 63.—GENERAL PROVISIONS APPLICABILITY TO SUBPART JJ

Reference	Applies to subpart JJ			Comment		
* * *	*	*	*	*	*	*
63.1(c)(6) .....	Yes.					
* * *	*	*	*	*	*	*

**Subpart KK—[Amended]**

22. Table 1 to subpart KK of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 1 TO SUBPART KK OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART KK

General provisions reference	Applicable to subpart KK			Comment		
* * *	*	*	*	*	*	*
§ 63.1(c)(6) .....	Yes.					
* * *	*	*	*	*	*	*

**Subpart MM—[Amended]**

23. Table 1 to subpart MM of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 1 TO SUBPART MM OF PART 63.—GENERAL PROVISIONS APPLICABILITY TO SUBPART MM

Reference	Summary of requirements	Applies to subpart MM			Explanation	
* * *	*	*	*	*	*	*
63.1(c)(6) .....	Becoming an area source .....	Yes.				
* * *	*	*	*	*	*	*

**Subpart DDD—[Amended]**

24. Table 1 to subpart DDD of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 1 TO SUBPART DDD OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART DDD OF PART 63

General provisions citation	Requirement	Applies to subpart DDD?			Explanation	
* * *	*	*	*	*	*	*
63.1(c)(6) .....	.....	Yes.				
* * *	*	*	*	*	*	*

**Subpart GGG—[Amended]**

25. Table 1 to subpart GGG of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 1 TO SUBPART GGG OF PART 63.—GENERAL PROVISIONS APPLICABILITY TO SUBPART GGG

General provisions reference	Summary of requirements	Applies to subpart GGG	Comments
* * *	* * *	* * *	* * *
63.1(c)(6) .....	Becoming an area source .....	Yes.	
* * *	* * *	* * *	* * *

**Subpart HHH—[Amended]**

26. Table 2 to subpart HHH of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

**Appendix: Table 2 to Subpart HHH of Part 63—Applicability of 40 CFR Part 63 General Provisions to Subpart HHH**

General Provisions Reference	Applies to subpart HHH	Explanation
* * *	* * *	* * *
§ 63.1(c)(6) .....	Yes.	
* * *	* * *	* * *

**Subpart JJJ—[Amended]**

27. Table 1 to subpart JJJ of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 1 TO SUBPART JJJ OF PART 63—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART JJJ AFFECTED SOURCES

Reference	Applies to subpart JJJ	Explanation
* * *	* * *	* * *
§ 63.1(c)(6) .....	Yes.	
* * *	* * *	* * *

\* \* \* \* \*

**Subpart LLL—[Amended]**

28. Table 1 to subpart LLL of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 1 TO SUBPART LLL OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS

Citation	Requirement	Applies to subpart LLL	Explanation
* * *	* * *	* * *	* * *
63.1(c)(6) .....	.....	Yes.	
* * *	* * *	* * *	* * *

**Subpart MMM—[Amended]**

29. Table 1 to subpart MMM of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 1 TO SUBPART MMM OF PART 63.—GENERAL PROVISIONS APPLICABILITY TO SUBPART MMM

Reference to subpart A	Applies to subpart MMM	Explanation
------------------------	------------------------	-------------

TABLE 1 TO SUBPART MMM OF PART 63.—GENERAL PROVISIONS APPLICABILITY TO SUBPART MMM—Continued

Reference to subpart A			Applies to subpart MMM			Explanation	
*	*	*	*	*	*	*	*
§ 63.1(c)(6)	.....	Yes.					
*	*	*	*	*	*	*	*

**Subpart NNN—[Amended]**

30. Table 1 to subpart NNN of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 1 TO SUBPART NNN OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART NNN

General provisions citation			Requirement			Applies to subpart NNN		Explanation	
*	*	*	*	*	*	*	*	*	*
63.1(c)(6)	.....	.....	Yes.						
*	*	*	*	*	*	*	*	*	*

**Subpart OOO—[Amended]**

31. Table 1 to subpart OOO of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 1 TO SUBPART OOO OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART OOO AFFECTED SOURCES

Reference			Applies to subpart OOO			Explanation	
*	*	*	*	*	*	*	*
63.1(c)(6)	.....	Yes.					
*	*	*	*	*	*	*	*

\* \* \*

**Subpart PPP—[Amended]**

32. Table 1 to subpart PPP of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 1 TO SUBPART PPP OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART PPP AFFECTED SOURCES

Reference			Applies to subpart PPP			Explanation	
*	*	*	*	*	*	*	*
63.1(c)(6)	.....	Yes.					
*	*	*	*	*	*	*	*

\* \* \*

**Subpart RRR—[Amended]**

33. Appendix A to subpart RRR of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:



## APPENDIX A TO SUBPART RRR OF PART 63. I GENERAL PROVISIONS APPLICABILITY TO SUBPART RRR

Citation	Requirement	Applies to RRR	Comment
* * *	* * *	* * *	* * *
§ 63.1(c)(6) .....	.....	Yes.	
* * *	* * *	* * *	* * *

**Subpart VVV—[Amended]**

34. Table 1 to subpart VVV of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 1 TO SUBPART VVV OF PART 63.—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART VVV

General provisions reference	Applicable to subpart VVV	Explanation
* * *	* * *	* * *
§ 63.1(c)(6) .....	Yes.	
* * *	* * *	* * *

**Subpart HHHH—[Amended]**

35. Table 2 to subpart HHHH of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 2 TO SUBPART HHHH OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART HHHH

Citation	Requirement	Applies to HHHH	Explanation
* * *	* * *	* * *	* * *
§ 63.1(c)(6) .....	.....	Yes.	
* * *	* * *	* * *	* * *

**Subpart IIII—[Amended]**

36. Table 2 to subpart IIII of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 2 TO SUBPART IIII OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART IIII OF PART 63

Citation	Subject	Applicable to subpart IIII	Explanation
* * *	* * *	* * *	* * *
§ 63.1(c)(6) .....	Becoming an area source .....	Yes.	
* * *	* * *	* * *	* * *

**Subpart JJJJ—[Amended]**

37. Table 2 to subpart JJJJ of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 2 TO SUBPART JJJJ OF PART 63.—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART JJJJ

General provisions reference			Applicable to subpart JJJJ			Explanation	
*	*	*	*	*	*	*	*
§ 63.1(c)(6)	.....	Yes.					
*	*	*	*	*	*	*	*

**Subpart KKKK—[Amended]**

38. Table 5 to subpart KKKK of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 5 TO SUBPART KKKK OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART KKKK

Citation		Subject	Applicable to subpart KKKK			Explanation	
*	*	*	*	*	*	*	*
§ 63.1(c)(6)	.....	Becoming an area source	.....	Yes.			
*	*	*	*	*	*	*	*

**Subpart MMMM—[Amended]**

39. Table 2 to subpart MMMM of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 2 TO SUBPART MMMM OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART MMMM OF PART 63

Citation		Subject	Applicable to subpart III			Explanation	
*	*	*	*	*	*	*	*
§ 63.1(c)(6)	.....	Becoming an area source	.....	Yes.			
*	*	*	*	*	*	*	*

**Subpart NNNN—[Amended]**

40. Table 2 to subpart NNNN of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 2 TO SUBPART NNNN OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART NNNN

Citation		Subject	Applicable to subpart NNNN			Explanation	
*	*	*	*	*	*	*	*
§ 63.1(c)(6)	.....	Becoming an area source	.....	Yes.			
*	*	*	*	*	*	*	*

**Subpart OOOO—[Amended]**

41. Table 3 to subpart OOOO of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 3 TO SUBPART OOOO OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART OOOO

Citation	Subject	Applicable to subpart OOOO	Explanation
* * *	* * *	* * *	* * *
§ 63.1(c)(6) .....	Becoming an area source .....	Yes.	
* * *	* * *	* * *	* * *

**Subpart PPPP—[Amended]**

42. Table 2 to subpart PPPP of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 2 TO SUBPART PPPP OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART PPPP OF PART 63

Citation	Subject	Applicable to subpart PPPP	Explanation
* * *	* * *	* * *	* * *
§ 63.1(c)(6) .....	Becoming an area source .....	Yes.	
* * *	* * *	* * *	* * *

**Subpart QQQQ—[Amended]**

43. Table 4 to subpart QQQQ of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 4 TO SUBPART QQQQ OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART QQQQ OF PART 63

Citation	Subject	Applicable to subpart QQQQ	Explanation
* * *	* * *	* * *	* * *
§ 63.1(c)(6) .....	Becoming an area source .....	Yes.	
* * *	* * *	* * *	* * *

**Subpart RRRR—[Amended]**

44. Table 2 to subpart RRRR of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 2 TO SUBPART RRRR OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART RRRR

Citation	Subject	Applicable to subpart	Explanation
* * *	* * *	* * *	* * *
§ 63.1(c)(6) .....	Becoming an area source .....	Yes.	
* * *	* * *	* * *	* * *

**Subpart SSSS—[Amended]**

45. Table 2 to subpart SSSS of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 2 TO SUBPART SSSS OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART SSSS

General provisions reference	Applicable to subpart SSSS			Explanation		
* .....	*	*	*	*	*	*
§ 63.1(c)(6) .....	Yes.			*	*	*
* .....	*	*	*	*	*	*

**Subpart VVVV—[Amended]**

46. Table 8 to subpart VVVV of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 8 TO SUBPART VVVV OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO (40 CFR PART 63, SUBPART A) TO SUBPART VVVV

Citation	Requirement	Applies to subpart VVVV			Explanation	
* .....	*	*	*	*	*	*
§ 63.1(c)(6) .....	Yes.			*	*	*
* .....	*	*	*	*	*	*

**Subpart WWWW—[Amended]**

47. Table 15 to subpart WWWW of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 15 TO SUBPART WWWW OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS (SUBPART A) TO SUBPART WWWW OF PART 63

The general provisions reference . . .	That addresses . . .	And applies to subpart WWWW of part 63 . . .			Subject to the following additional information . . .	
* .....	*	*	*	*	*	*
§ 63.1(c)(6) .....	Becoming an area source .....	Yes.			*	*
* .....	*	*	*	*	*	*

**Subpart AAAAA—[Amended]**

48. Table 8 to subpart AAAAA of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 8 TO SUBPART AAAAA OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART AAAAA

Citation	Summary of requirement	Am I subject to this requirement?			Explanation	
* .....	*	*	*	*	*	*
§ 63.1(c)(6) .....	Becoming an area source .....	Yes.			*	*
* .....	*	*	*	*	*	*

**Subpart PPPPP—[Amended]**

49. Table 7 to subpart PPPPP of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 7 TO SUBPART P P P P P OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART P P P P P

Citation	Subject	Brief description	Applies to subpart P P P P P
* * *	* * *	* * *	* * *
§ 63.1(c)(6) .....	Applicability .....	Becoming an area source .....	Yes.
* * *	* * *	* * *	* * *

[FR Doc. E6–22283 Filed 12–29–06; 8:45 am]  
BILLING CODE 6560–50–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### 42 CFR Part 72

RIN 0920–AA03

#### Interstate Shipment of Etiologic Agents

**AGENCY:** Centers for Disease Control and Prevention (CDC), HHS.

**ACTION:** Notice for proposed rulemaking.

**SUMMARY:** HHS proposes to remove Part 72 of Title 42, Code of Federal Regulations, which governs the interstate shipment of etiologic agents, because the U.S. Department of Transportation (DOT) already has in effect a more comprehensive set of regulations applicable to the transport in commerce of infectious substances. DOT harmonizes its transport requirements with international standards adopted by the United Nations (UN) Committee of Experts on the Transport of Dangerous Goods for the classification, packaging, and transport of infectious substances. Rescinding the rule will eliminate duplication of the more current DOT regulations that cover intrastate and international, as well as interstate, transport. HHS replaced those sections of Part 72 that deal with select biological agents and toxins with a new set of regulations found in Part 73 of Title 42. HHS anticipates that removal of Part 72 will alleviate confusion and reduce the regulatory burden with no adverse impact on public health and safety.

**DATES:** Written comments must be received on or before March 5, 2007. Written comments on the proposed information collection requirements should also be submitted on or before March 5, 2007. Comments received after March 5, 2007 will be considered to the extent practicable.

**ADDRESSES:** You may submit written comments to the following address: U.S. Department of Health and Human

Services, Centers for Disease Control and Prevention, National Center for Infectious Diseases/OD, ATTN: Interstate Shipment of Etiologic Agents Comments, 1600 Clifton Road, NE (C12), Atlanta, GA 30333. Comments will be available for public inspection Monday through Friday, except for legal holidays, from 9 a.m. until 5 p.m. at 1600 Clifton Road, NE, Atlanta, GA. Please call Ruenell Massey at 404–639–945 to schedule your visit. Comments also may be viewed at <http://www.cdc.gov/ncidod/agentshipment/index.htm>. You may submit written comments by fax to 404–639–3039, Attention: Dr. Janet Nicholson, or electronically via the Internet at <http://www.regulations.gov>. To download an electronic version of the rule, you may access <http://www.regulations.gov>. You must include the agency name (Centers for Disease Control and Prevention) and Regulatory Information Number (RIN) on all submissions for this rulemaking.

**FOR FURTHER INFORMATION CONTACT:** Dr. Janet K. Nicholson, National Center for Infectious Diseases/OD, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services, 1600 Clifton Rd., NE (MS–C12), Atlanta GA 30333; telephone: 404–639–3945; e-mail [jkn1@cdc.gov](mailto:jkn1@cdc.gov).

**SUPPLEMENTARY INFORMATION:** Part 72 of Title 42 of the Code of Federal Regulations provides minimal requirements for packaging and shipping materials, including diagnostic specimens and biological products, reasonably believed to contain an etiologic agent. It provides more detailed requirements, including labeling, for materials containing certain etiologic agents, with a list of the biological agents and toxins provided. For agents on the list, the rule requires reporting to HHS/CDC damaged packages and packages not received. The rule also requires sending certain agents on the list by registered mail or an equivalent system.

The rule, as currently promulgated, is out-of-date, and duplicates more current regulations of DOT. Further, the regulation is inconsistent with the procedures of other transport governing bodies, such as the International Civil

Aviation Organization (ICAO) and the International Air Transport Association (IATA), for air, and the U.S. Postal Service for ground.

Section 72.6, a major portion of 42 CFR 72 that dealt with select agents, was superseded by the issuance of an Interim Final Rule for 42 CFR 73 on December 13, 2002 (67 FR 76886). Part 73 implements provisions of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002.

The continued existence of the remaining provisions of the out-of-date HHS/CDC regulation is confusing to the packaging and transport communities. The provisions serve no useful purpose that merits their retention. HHS/CDC will remain available for consultation on and response to public-health issues and emergencies, in accordance with its normal duties in the interest of public health and safety.

#### Transition From HHS to DOT Regulations

DOT has the primary statutory authority to regulate the safe and secure transportation of all hazardous materials, including infectious materials, shipped in intrastate, interstate, and foreign commerce. The etiologic agents covered by 42 CFR 72 are considered to be hazardous materials, and, in practice, the DOT regulations, 49 CFR 171–178, have superseded since DOT began including more specific regulations on infectious substances. The earlier versions of the DOT regulations on etiologic agents were based on and virtually identical to the HHS regulations. These regulations have been modified over time, as necessary, to continue to provide protection for persons who handle shipments with as few impediments as possible to quick shipment. In 1990, DOT authorized the term “infectious substance” as synonymous with “etiologic agent.” In 1991, DOT expanded the definition of “etiologic agent” to include agents listed in 42 CFR 72, plus others that cause or could cause severe, disabling or fatal human disease, thereby including agents such as human immunodeficiency virus that were not on the HHS list. DOT also issued expanded packaging

**From:** Atkinson, Emily  
**Location:** WJC-N 5415 + Dial: Ex. 6 - Personal Privacy Participant Code: Ex. 6 - Personal Privacy  
**Importance:** Normal  
**Subject:** Once in Always in Discussion  
**Start Date/Time:** Wed 1/24/2018 2:30:00 PM  
**End Date/Time:** Wed 1/24/2018 3:00:00 PM

To: David Harlow, Bill Lamason, Kevin Culligan, Debra Dalcher, Scott Jordan, Sonja Rodman, Penny Lassiter

**From:** Dalcher, Debra  
**Location:** Bill's Office, Call in on Ex. 6 - Personal Privacy  
**Importance:** Normal  
**Subject:** Pre-Peter Meeting to Discuss OIAI Memo - re. Implementation Section (OGC outstanding comments)  
**Start Date/Time:** Mon 12/4/2017 4:00:00 PM  
**End Date/Time:** Mon 12/4/2017 5:00:00 PM  
OIAI 12.4.17 0800 DD.DOCX

Meeting to review & discuss outstanding comments/questions from OGC in the implementation Section of the Memo.

Incorporated Scott's minor edits to his comments in the version attached to this meeting notice.

Thank you, Debra

**From:** Johnson, Tanya  
**Location:** RTP-OAQPS-D210A-SPPD-IO-only/RTP-OAQPS-BLDG-D/Restricted  
**Importance:** Normal  
**Subject:** OIAI Discussion, Call-in: Ex. 6 - Personal Privacy  
**Start Date/Time:** Mon 12/4/2017 6:00:00 PM  
**End Date/Time:** Mon 12/4/2017 6:30:00 PM

POC: Bill Lamason



**From:** Lamason, Bill  
**Location:** D220D/Bill's Office, Ex. 6 - Personal Privacy  
**Importance:** Normal  
**Subject:** OIAI Economic Analysis Resource Estimates  
**Start Date/Time:** Mon 1/29/2018 6:00:00 PM  
**End Date/Time:** Mon 1/29/2018 7:00:00 PM

**From:** Dalcher, Debra  
**Location:** Ex. 6 - Personal Privacy  
**Importance:** Normal  
**Subject:** General Discussion  
**Start Date/Time:** Wed 1/10/2018 6:00:00 PM  
**End Date/Time:** Wed 1/10/2018 6:30:00 PM

---

**From:** Lamason, Bill  
**Sent:** Tuesday, January 09, 2018 12:18 PM  
**To:** Dalcher, Debra <[dalcher.debra@epa.gov](mailto:dalcher.debra@epa.gov)>; Culligan, Kevin <[Culligan.Kevin@epa.gov](mailto:Culligan.Kevin@epa.gov)>  
**Subject:** General Discussion

Please join this short conversation with David Harlow on OIAI.

## Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

**Subject:** General Discussion  
**Location:** David will call Bill at Ex. 6 - Personal Privacy  
**Start:** Wed 1/10/2018 1:00 PM  
**End:** Wed 1/10/2018 1:30 PM  
**Recurrence:** (none)  
**Meeting Status:** Accepted  
**Organizer:** Harlow, David  
**Required Attendees:** Lamason, Bill

**From:** Dalcher, Debra  
**Location:** RTP-OAQPS; Ex. 6 - Personal Privacy PPD/Phone-Line/RTP-OAQPS-BLDG-C  
**Importance:** Normal  
**Subject:** OIAI Discussion - Agenda will be Added  
**Start Date/Time:** Mon 1/8/2018 4:00:00 PM  
**End Date/Time:** Mon 1/8/2018 5:00:00 PM  
RevisedOIAImemorandum\_1 5 2018 .docx

Agenda

Wehrum Version of Memo

- Discussion on the content of the memo.

## Ex. 5 - Deliberative Process/Attorney client

## **Ex. 5 - Deliberative Process/Attorney client**

- o Do we need a new docket or can we use the existing one?

**From:** Atkinson, Emily  
**Location:** WJC-N 5428 + Dial Ex. 6 - Personal Privacy; **Participant Code:** Ex. 6 - Personal Privacy  
**Importance:** Normal  
**Subject:** Once In, Always In Follow Up  
**Start Date/Time:** Wed 2/7/2018 9:00:00 PM  
**End Date/Time:** Wed 2/7/2018 9:30:00 PM

To: David Harlow, Bill Lamason, Kevin Culligan, Debra Dalcher, Scott Jordan, Sonja Rodman, Penny Lassiter

**From:** Wehrum, Bill  
**Location:** WJC-N 5400 + RTP Video  
**Importance:** Normal  
**Subject:** Once In, Always In Comms Discussion  
**Start Date/Time:** Wed 1/24/2018 9:45:00 PM  
**End Date/Time:** Wed 1/24/2018 10:15:00 PM

**To:** Bill Wehrum, David Harlow, Mandy Gunasekara, Liz Bowman, John Millett, Isabel DeLuca; Tsirigotis, Peter; Koerber, Mike

**From:** Atkinson, Emily  
**Location:** WJC-N 5415 + Dial Ex. 6 - Personal Privacy; **Participant Code:** Ex. 6 - Personal Privacy  
**Importance:** Normal  
**Subject:** Once in Always in Discussion  
**Start Date/Time:** Wed 1/24/2018 2:30:00 PM  
**End Date/Time:** Wed 1/24/2018 3:00:00 PM

To: David Harlow, Bill Lamason, Kevin Culligan, Debra Dalcher, Scott Jordan, Sonja Rodman, Penny Lassiter

**From:** Gunasekara, Mandy  
**Location:** Hall of States, 444 North Capitol St NW, Room 230, Washington DC 20001  
**Importance:** Normal  
**Subject:** Winter 2018 Board Meeting, National Association of Clean Air Agencies Speech (Confirmed)  
**Start Date/Time:** Wed 1/31/2018 6:30:00 PM  
**End Date/Time:** Wed 1/31/2018 7:30:00 PM

[Invites / forms for Bill Wehrum & Mandy Gunasekara](#)

[2018WinterBoard-Agenda-11282017.pdf](#)

[NACAA BW EPA Invitation Letter.pdf](#)

[NACAA EPA MG Invitation Letter.pdf](#)

[Mandy Gunasekara Event Form PDAA\\_NACAA.DOCX](#)

[Bill Wehrum Event Form PDAA\\_NACAA.DOCX](#)

[Confirmed 1/31/18 at 1:30pm: Invites / forms for Bill Wehrum & Mandy Gunasekara](#)

[Meeting with NACAA next week](#)

30-60 mins with Mandy Gunasekara on strategic plan & cooperative federalism issues

60 mins with Bill Wehrum on office of air issues



**To:** Atkinson, Emily[Atkinson.Emily@epa.gov]  
**From:** Miles Keogh  
**Sent:** Tue 11/28/2017 8:00:08 PM  
**Subject:** Invites / forms for Bill Wehrum & Mandy Gunasekara  
[2018WinterBoard-Agenda-11282017.pdf](#)  
[NACAA BW EPA Invitation Letter.pdf](#)  
[NACAA EPA MG Invitation Letter.pdf](#)  
[Mandy Gunasekara Event Form PDAA\\_NACAA.DOCX](#)  
[Bill Wehrum Event Form PDAA\\_NACAA.docx](#)

Emily,

I've got two forms, two invite letters, and one draft agenda for our invitation to the EPA team. Right now I'm shipping it to Mandy Gunasekara and to Bill Wehrum, previously we'd also included Ken Wagner in the invite – if we can hear from Mandy & Bill I'm excited about that, and if Ken is still interested in participating he's very welcome, just let me know. There's certainly no shortage of appetite to understand what EPA is thinking about among my members. I think we've got some good work ahead of us.

Please let me know if you need anything else.

My best, Miles

---

Miles Keogh

NACAA

(202) 624-7864

@WeAre4CleanAir

**From:** Atkinson, Emily [mailto:Atkinson.Emily@epa.gov]  
**Sent:** Tuesday, November 7, 2017 3:59 PM  
**To:** Miles Keogh <mkeogh@4cleanair.org>  
**Subject:** RE: A save the date for our DC meeting

Hi Miles,

I am putting a hold on Mandy's calendar now.

In the meantime, please fill out and return the attached event form no later than December 1<sup>st</sup>.

Thank you.

Emily

Emily Atkinson  
Management Analyst/Office Manager

Immediate Office of the Acting Assistant Administrator  
Office of Air and Radiation, USEPA  
Room 5412B, 1200 Pennsylvania Avenue NW  
Washington, DC 20460  
Voice: 202-564-1850  
Email: [atkinson.emily@epa.gov](mailto:atkinson.emily@epa.gov)

**From:** Gunasekara, Mandy  
**Sent:** Tuesday, November 07, 2017 2:16 PM  
**To:** Miles Keogh <mkeogh@4cleanair.org>  
**Cc:** Wagner, Kenneth <[wagner.kenneth@epa.gov](mailto:wagner.kenneth@epa.gov)>; Dominguez, Alexander <[dominguez.alexander@epa.gov](mailto:dominguez.alexander@epa.gov)>; Atkinson, Emily <[Atkinson.Emily@epa.gov](mailto:Atkinson.Emily@epa.gov)>; Loving, Shanita <[Loving.Shanita@epa.gov](mailto:Loving.Shanita@epa.gov)>; Cyran, Carissa <[Cyran.Carissa@epa.gov](mailto:Cyran.Carissa@epa.gov)>  
**Subject:** Re: A save the date for our DC meeting

Hey Miles,

Great to hear from you and thanks for the early outreach. I've CC'd the logistics team to help set up the a time that works. I look forward to seeing you then (if not before).

Best,

Mandy

Sent from my iPhone

On Nov 7, 2017, at 2:02 PM, Miles Keogh <[mkeogh@4cleanair.org](mailto:mkeogh@4cleanair.org)> wrote:

Mandy, Ken,

I hope all's well at EPA.

I wanted to pin to your calendars that we'll be issuing an invite to you two for the NACAA Board & Committee Chairs meeting here at the Hall of the States, 444 North Capitol St in DC, on the afternoon of Wednesday, January 31, 2018.

Right now that afternoon has a number of other work areas we want to accomplish but nothing pinned to a time – so if there's a time window that works better for you, I'm happy to lock that down.

We'd like about 90 minutes of your time, with a focus on how implementing the EPA strategic plan will help advance cooperative federalism in the area of air quality. I know that sounds a little vague but I promise a structured conversation. Pending the confirmation timing I'll also be reaching out to Bill Wehrum with an invitation.

Thanks again and please look for a formal invitation from Wisconsin & Akron OH this week.

My best, Miles

---

Miles Keogh

NACAA

(202) 624-7864

@WeAre4CleanAir

**From:** Miles Keogh

**Sent:** Thursday, October 5, 2017 11:09 AM

**To:** 'Gunasekara, Mandy' <[Gunasekara.Mandy@epa.gov](mailto:Gunasekara.Mandy@epa.gov)>; 'wagner.kenneth@epa.gov' <[wagner.kenneth@epa.gov](mailto:wagner.kenneth@epa.gov)>

**Subject:** A save the date for our DC meeting

Mandy (and Ken), what a marathon hearing yesterday at Dirksen, I thought Bill did quite well. Mandy, I was going to come over and shake your hand at the end but I got pulled out for a call about funding, sorry I missed the chance.

I wanted to flag something for your calendars – NACAA is going to have its board meeting here at the Hall of States on Jan 31 -Feb 1. We'd like to see if someone – I'm sure it's a longshot but I'd like to see if it can be Administrator Pruitt, or assuming he's confirmed, Bill Wehrum – can come talk about the 2018-2022 EPA strategic plan.

We haven't set the agenda yet so the timing would be really flexible. I've run this idea past my co-presidents in Ohio and Wisconsin and they like it. The audience would be about 30 people - the state and local agency heads on our board of directors - and the Hall of States is a building with good access control so, no media or outsiders. That might make a really

productive conversation possible without a chance of distractions.

I'd also really welcome having you and Ken on our agenda, because we have a lot of other things to work on together – cooperative federalism, permit streamlining, organizational efficiency / lean management, training opportunities – and if you're open to participating I'd work those important areas into our agenda. If you could take a look at your calendar and let me know if the timing's already impossible/possible, that'd help me figure out a path forward. I'm happy to work out logistics on this that are easy for you guys, but I wanted to notify you about the dates ASAP.

Sorry again that I didn't get a chance to say hi in person yesterday and I'll look forward to another chance soon.

My best, Miles

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Miles Keogh

Executive Director

National Association of Clean Air Agencies

444 North Capitol Street, NW, Suite 307

Washington, DC 20001

Phone: (202) 624-7864

[mkeogh@4cleanair.org](mailto:mkeogh@4cleanair.org)

[www.4cleanair.org](http://www.4cleanair.org)

**To:** Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]; Wehrum, Bill[Wehrum.Bill@epa.gov]; Woods, Clint[woods.clint@epa.gov]  
**Cc:** Atkinson, Emily[Atkinson.Emily@epa.gov]; Loving, Shanita[Loving.Shanita@epa.gov]; Wagner, Kenneth[wagner.kenneth@epa.gov]  
**From:** Miles Keogh  
**Sent:** Fri 1/26/2018 6:00:37 PM  
**Subject:** Meeting with NACAA next week

Dear Bill, Mandy, and Clint,

I hope things are going well – I’m writing to give you guys some final details on our upcoming board meeting. I’m really excited to help connect you with the NACAA leadership. We’ve asked y’all to participate on January 31 between 1:30 pm and 3:30 pm, here at the Hall of States, 444 North Capitol St NW. We’ll have someone downstairs to help you get in through security and make sure you get to the meeting room on the third floor (and if your logistics team wants to reach me, I’ll have my phone -202-624-5981 - forwarded to my cell.) It’ll be a closed session with about 30 state and local air agency heads, plus the NACAA staff.

As for substance, Bill, I’m told you have a pretty good overview of OAR’s direction and priorities, building on the lines of what you talked about at CAAAC but updated to reflect stuff since. I wonder if you’d mind starting us out with that? Mandy, I wanted to ask if you could talk about the same stuff from the perspective of what’s in your hopper, especially inasmuch as you have insights into the yearlong conversation that y’all have had about what cooperative federalism actually means, in practice. In total I think we’re looking for about an hour or 75minutes of us listening to EPA, and the hour-ish balance as q&a. I’ve been asked to have a sort of ordered Q&A which Bart Sponseller from Wisconsin & Sam Rubens from Akron OH will moderate. Clint, if EPA sees there are things you’re the right guy to touch on, of course it’s very welcome. You may be able to talk about implementation & budgets and the links to the strategic plan, or may not, but it’s all welcome. I also know you may be suddenly unavailable!

Friends, I always come to the table with a full plate of goals, and I’ll be forthright about them – my folks are eager to get work done with EPA and to really walk the talk on cooperative federalism. In as much as you guys can frame your remarks around what they’re interested in, it’s that. What’s the formal and informal institutional infrastructure that connects the local and state implementers with the policies you’re making? How can that partnership be made much more effective, and kick in at a much earlier point in the process? How to we open up communications so we’re a constructive part of the policymaking process instead of reacting to it?

On a substantive basis, we'll have structured questions about the NAAQS, permit streamlining, about the CPP ANPRM, vehicle standards (especially MTE, gliders, and locomotives), "once in always in", international transport, enforcement issues, and fumigation. I know that's a lot of ground and not super specific, but I'm still corralling up the members' ideas. I thought I'd give you as much heads-up as possible.

If you have questions or suggestions, please don't hesitate. It was good to see you this week in Texas, Clint, thanks for coming out and ably representing EPA with the state and local agencies.

My best, Miles

---

Miles Keogh

NACAA

(202) 624-5981

@WeAre4CleanAir

**To:** Harlow, David[harlow.david@epa.gov]  
**From:** POLITICO Pro Energy Whiteboard  
**Sent:** Tue 1/30/2018 4:04:56 PM  
**Subject:** Pruitt: 'Once in, always in' rule change was policy decision

By Annie Snider

01/30/2018 11:02 AM EDT

EPA Administrator Scott Pruitt said this morning that last week's decision to end Clinton-era "once in, always in" Clean Air Act requirements was not made by the agency's air experts.

"That was a decision that was made outside of the program office of air. It was a policy office decision," Pruitt told the Senate Environment and Public Works Committee.

The comment came in response to a question from Sen. Tom Carper of Delaware, the top Democrat on the committee, about whether the agency conducted an analysis of the potential health effects of the policy change.

"I find it incredible that EPA did this seemingly without knowing or caring about potential health effects of its action," Carper said.

The "once in always in," codified in now revoked 1995 policy guidance, was designed to prevent major emitters like power plants and factories from getting out of tough requirements to limit their toxic air emissions. It required that any emitter that qualified as a "major" source of hazardous air pollutants would permanently be subject to that tougher standard to comply with MACT rules, even if its emissions dropped low enough to be considered an "area" source subject to fewer or no requirements.

*To view online:*

<https://www.politicopro.com/energy/whiteboard/2018/01/pruitt-once-in-always-in-rule-change-was-policy-decision-503744>

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Yes, very	Somewhat	Neutral	Not really	Not at all

**You received this POLITICO Pro content because your customized settings include: Energy: EPA; Energy: Clean Air Act. To change your alert settings, please go to <https://www.politicopro.com/settings>**

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This email was sent to harlow.david@epa.gov by: POLITICO, LLC 1000 Wilson Blvd.  
Arlington, VA, 22209, USA

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**From:** Atkinson, Emily  
**Location:** Hall of States, 444 North Capitol St NW, Room 230, Washington DC 20001  
**Importance:** Normal  
**Subject:** Winter 2018 Board Meeting, National Association of Clean Air Agencies Speech (Confirmed)  
**Start Date/Time:** Wed 1/31/2018 6:30:00 PM  
**End Date/Time:** Wed 1/31/2018 8:30:00 PM

Invites / forms for Bill Wehrum & Mandy Gunasekara

2018WinterBoard-Agenda-11282017.pdf

NACAA BW EPA Invitation Letter.pdf

NACAA EPA MG Invitation Letter.pdf

Mandy Gunasekara Event Form PDAA\_NACAA.DOCX

Bill Wehrum Event Form PDAA\_NACAA.DOCX

Confirmed 1/31/18 at 1:30pm: Invites / forms for Bill Wehrum & Mandy Gunasekara

Meeting with NACAA next week

30-60 mins with Mandy Gunasekara on strategic plan & cooperative federalism issues

60 mins with Bill Wehrum on office of air issues

**From:** Atkinson, Emily  
**Location:** WJC-N 5400  
**Importance:** Normal  
**Subject:** Once In, Always In Comms Discussion  
**Start Date/Time:** Wed 1/24/2018 9:45:00 PM  
**End Date/Time:** Wed 1/24/2018 10:15:00 PM

**To:** Bill Wehrum, David Harlow, Mandy Gunasekara, Liz Bowman, John Millett, Isabel DeLuca

**From:** Atkinson, Emily  
**Location:** SBA Offices - 409 3rd St. SW  
**Importance:** Normal  
**Subject:** HOLD || Meet with SBA (Tentative)  
**Start Date/Time:** Wed 1/31/2018 9:00:00 PM  
**End Date/Time:** Wed 1/31/2018 10:00:00 PM  
RE: New EPA job

**To:** Clint Woods, David Harlow

**To:** Harlow, David[harlow.david@epa.gov]  
**From:** POLITICO Pro Energy  
**Sent:** Fri 1/26/2018 10:44:33 AM  
**Subject:** Morning Energy: Trump takes the stage — Plenty of room at the White House inn — One-on-one with Barrasso

By Kelsey Tamborrino | 01/26/2018 05:42 AM EDT

*With help from Eric Wolff*

**TRUMP TAKES THE STAGE:** President Donald Trump is set to speak this morning from Davos, Switzerland, where he'll deliver a simple message to world leaders: "A prosperous America benefits the world, and fair economic competition is essential to that prosperity," the [White House said](#). Trump prepared for his speech Thursday by meeting with longtime U.S. allies: The prime ministers of Great Britain and Israel, and he declared that he had arrived with a message of "peace and prosperity." More on that [here](#).

**"When I decided to come to Davos, I didn't think in terms of elitists or globalists,** I thought in terms of lots of people who want to invest lots of money and they're all coming back to the United States. They're coming back to America, and I thought of it much more in those terms," Trump explained in an interview with CNBC. "After I said that I was going, there were massive stories about the elite and the globalists and the planes flying in and everything else. It's not about that. It's about coming to America, investing your money, creating jobs, companies coming in. We're setting records. Every day, we're setting records."

**Already "energy dominance" remarks emerged this week** from Energy Secretary Rick Perry, but watch for Trump to tout trade policy in his address to the World Economic Forum, including his brand new tariffs on solar equipment. The White House outlined that the president will describe how "America First" fits into a the forum's theme of "a shared future in a fractured world." On trade, Trump will likely discuss the administration's support of trade that is fair and reciprocal to the U.S. "The global economy cannot flourish unless all countries follow the rules and are held responsible when they don't," the White House said. The president is also looking to "forge closer ties" with allies, including French President Emmanuel Macron and Canadian Prime Minister Justin Trudeau — who have bumped heads with Trump on trade and climate policies in the past. Watch it [here](#).

**HAPPY FRIDAY!** I'm your host Kelsey Tamborrino. Many of you were very close, but no one guessed that in 1975, the Senate adopted a rule requiring most of its committees to work in public. That same year, the Senate approved open conference committee sessions. For today: How many senators attended the world premiere of "Mr. Smith Goes to Washington" held at Constitution Hall? Send your tips, energy gossip and comments to [ktamborrino@politico.com](mailto:ktamborrino@politico.com), or follow us on Twitter [@kelseytam](#), [@Morning\\_Energy](#) and [@POLITICOPro](#).

**PLENTY OF ROOM AT THE WHITE HOUSE INN:** Republican lawmakers are increasingly concerned that the Trump administration has yet to fill several energy-related vacancies across the federal government. A year out from Trump's inauguration, still no name has been selected for key positions, including overseeing EPA's Superfund program or to lead

the Bureau of Land Management or National Park Service, Pro's Anthony Adragna reports.

**Let's break this down:** Trump has yet to nominate 244 people out of the 635 key positions requiring Senate confirmation, according to a [tracker](#) from The Washington Post and Partnership for Public Service. Of those, there are no nominees for seven of the 17 slots at Interior requiring Senate confirmation, Anthony reports. At EPA, it's six of 13 spots, and 11 of 22 positions at the Energy Department. There's also been no movement on vacancies within the White House's Office of Science and Technology Policy, including the top spot, the longest that role has gone without a nominee.

**Why, you ask?** Some Republicans blame Democrats for drawing out the confirmation process, which others say has driven other potential candidates to opt out of government service altogether. But Trump himself vowed in an [interview](#) with Forbes in November that he didn't intend to fill out agency staffing. "I'm generally not going to make a lot of the appointments that would normally be — because you don't need them," Trump said.

**Still, the vacancies are cause for frustration for many:** "It has to make it just that much more difficult within the agencies to just be so short-teamed," Senate Energy Chairman [Lisa Murkowski](#) said. "I know people who have been nominated already who are getting really frustrated. It's demoralizing," Sen. [Dan Sullivan](#) said. "They have real lives. They have bills they got to pay. We need to do better." Read the story [here](#).

**ONE-ON-ONE WITH BARRASSO:** What's Year 2 atop Senate EPW mean for Wyoming's [John Barrasso](#)? In an interview with Anthony, Barrasso echoes the White House's focus on infrastructure, praises his Democratic cohort [Tom Carper](#) and discusses where exactly he falls in ongoing talks on the Renewable Fuel Standard. **Some highlights from [the exclusive interview](#):**

**On infrastructure:** "[P]art of what we're doing with WRDA right now is infrastructure. Water resource development is infrastructure. But you need to deal with the roads, the highways, the bridges, the dams, all of it out there. So, I'm optimistic. We'll be discussing it at the retreat and I hope the president brings it up in the State of the Union. And I mentioned that to both [National Economic Council] Director [Gary] Cohn and [Transportation] Secretary [Elaine] Chao that I think it would be good to have the president put some meat on the bones during the State of the Union address next Tuesday."

**On paying for it:** "There's a difference between rural and urban. Public-private partnerships] can work in urban areas. They're not going to work in rural areas."

**On Renewable Fuel Standard talks:** "If a refinery goes bankrupt because of a system that the government put in place after the refinery was built, that's not a system that's worked. So we need to modernize and modernize this to take into account where we are today with the technology and the vehicles and the amount of fuel being consumed. [Sen. [John Cornyn](#)'s] leading the efforts to develop this bipartisan reform bill that all the stakeholders can support and then once that's introduced the committee is going to give it serious consideration."

**ONCE-IN POLICY NO MORE:** EPA air chief Bill Wehrum withdrew Clinton-era guidance

Thursday that was designed to prevent major emitters from getting out of strict requirements to limit their toxic air emissions. "This guidance is based on a plain language reading of the statute that is in line with EPA's guidance for other provisions of the Clean Air Act," Wehrum said in a [statement](#). "It will reduce regulatory burden for industries and the states, while continuing to ensure stringent and effective controls on hazardous air pollutants." In a memo, EPA revoked the 1995 so-called once-in always-in policy and said it would consider new regulations to clarify its interpretation of the law, Pro's Alex Guillén [reports](#). Under the previous policy, any emitter that qualified as a "major" source of hazardous air pollutants, like power plants and factories, would forever be subject to that tougher standard to comply with MACT rules, even if its emissions dropped low enough to be considered an "area" source subject to fewer or no requirements, Alex writes. Read the memo [here](#).

**Barrasso and Sen. Shelley Moore Capito previously asked** EPA Administrator Scott Pruitt to withdraw the policy earlier this month, they said on Thursday, cheering the move. "Withdrawal of this policy means manufacturers, oil and gas operations, and other types of industrial facilities will have greater incentive to reduce emissions," Barrasso said in a statement. "Now these companies can help protect the environment without wasting time and money on unnecessary red tape."

**Not so fast:** [Ed Markey](#) said the move "could be the worst environmental sin yet from the Trump administration." Greens were also quick to call out the decision; The League of Conservation Voters's Sara Chieffo called it a "gutting" of public health protections.

**BIODIESEL PRODUCERS CREDIT STILL IN DISCUSSION:** The biodiesel producers' credit supported by Sen. [Chuck Grassley](#) and some Midwestern senators still has life. [Orrin Hatch](#)'s tax extenders bill revives the credit for blenders of biodiesel, but the Finance committee members are still considering moving it to a producers credit, according to Derek Theurer, an aide to [Bill Cassidy](#) who was only speaking at a Jones Day tax conference Thursday. "There's members on the Senate side that have views both ways. Some that would like to move to producers' credits, others that are concerned about impact on consumers, the price of fuel," he said. "That's the kind of competing interests being weighed and members are continuing to discuss it."

**TERMS AGREED IN SUNCOKE SETTLEMENT:** Metallurgical coke producer SunCoke Energy and Cokenergy reached an agreement to resolve alleged Clean Air Act violations related to leaking coke ovens and excessive bypass venting of hot coking gases, the Justice Department said. A consent decree requires estimated annual emissions reductions of 2,075 tons of coke oven emissions and requires coke oven rebuilds, DOJ said. Cokenergy will also spend \$250,000 on a lead abatement project in the East Chicago area. DOJ added, the companies "agreed to enhanced monitoring and testing requirements, including two stack tests to measure lead emissions," and will pay a \$5 million civil penalty. "Today's settlement is one example of how EPA is committed to reducing exposure to lead and other contaminants in communities across the country," Pruitt said on Thursday. "Lead exposure is a serious problem and reducing it is a priority for EPA."

**PRUITT AND THE PRESS:** E&E News chronicles Pruitt's relationship with the press in a

lengthy story from Thursday on the EPA chief's tour through the country on the Waters of the U.S. rule. Based on roughly thousands of pages of documents obtained through public records requests to multiple states, E&E's Ariel Wittenberg and Kevin Bogardus piece together Pruitt's press strategy. Read it [here](#).

**CALIFORNIA CALLING:** California Gov. Jerry Brown celebrated the Golden State and rebuked the president's climate agenda Thursday during his final "State of the State" address. The governor "rallied this bulwark of the Democratic Party to push forward on climate change, immigration and high-speed rail, signaling another year of conflict between Washington and the nation's most populous state," POLITICO's David Siders and Carla Marinucci [report](#). "Despite what is widely believed by some of the most powerful people in Washington, the science of climate change is not in doubt," the Democratic governor said Thursday. "All nations agree except one, and that is solely because of one man: our current president." Brown added, "Here in California, we follow a different path."

**Brown's agenda, which includes fighting climate change, [putting 5 million zero-emission vehicles on the road by 2030](#)** and defending a state gas tax increase, "stands starkly at odds with the White House, and the governor cut at Trump implicitly," David and Carla write, setting the stage for year another of year of Washington fights from the state. It also continues a yearlong trend of feuding with Trump for the coastal state, with tensions heightening already this year. [Earlier this week](#), state Attorney General Xavier Becerra filed a lawsuit challenging the administration's repeal of an Obama-era fracking rule, and on Thursday, the California delegation, including Sens. [Kamala Harris](#) and [Dianne Feinstein](#), [wrote to](#) Interior Secretary Ryan Zinke, requesting Californians be able to comment on the offshore drilling proposal. Read more [here](#).

**DINNER WITH TRUMP:** The president had dinner in Davos with multinational business leaders Thursday, including Eldar Saetre of Norway's Statoil ASA and Patrick Pouyanne of France's Total SA. Much like his Cabinet meetings, Trump went around the table and had each participant discuss his business. At one point, Pouyanne said his company was investing in renewables, joking to Trump, "and maybe you disagree." Saetre, meanwhile, used his time to congratulate Trump on tax reform. "I think that is really good news, for all of us here, but for oil and gas and our industry."

**SOUTH KOREA WANTS SOLAR CONSULTATION:** South Korea asked the WTO twice separately this week for a consultation with the U.S. on its recent [solar tariff](#) and [washing machine](#) decisions. Korea argues the U.S. violated several international trade rules in its action, Pro's Adam Behsudi [reports](#). Separate from the WTO's dispute settlement process, the requests kick-start a process under the WTO's safeguards agreement.

**WEATHER CHANNEL TAKES STAND ON CLIMATE:** The Weather Channel website took a stance on climate change Thursday, posting a banner that blared "THERE IS NO CLIMATE CHANGE DEBATE," and linked to a series of stories showing its effect. The company posted a [statement](#) detailing its "United States of Climate Change" project that will focus on such stories, but will not debate the science of climate change. "We're going to see how individuals, communities and businesses are responding to the changes that are already



happening in America, and how they're preparing for the changes that have yet to occur," the website wrote.

**LCV ENDORSES IN ILLINOIS:** The LCV Action Fund backed two congressional candidates on Thursday: Brendan Kelly for Illinois' 12th District and Erik Jones in the 13th District. "Brendan Kelly and Erik Jones are exciting new voices for climate action and environmental protection," said LCV Action Fund Senior Vice President of Government Affairs Tiernan Sittenfeld.

**MAIL CALL:** General president of the United Association, Mark McManus, penned a letter to Trump on Thursday, on the Renewable Fuel Standard and bankruptcy of Philadelphia Energy Solutions. Read the letter [here](#).

**MOVER, SHAKER:** The Trust for Public Land announced Thursday that Diane Regas will be the organization's new president and CEO. Regas is currently executive director of Environmental Defense Fund.

## QUICK HITS

— Trump wanted to know how U.S. stacks up to Russia on science, [E&E News](#).

— FirstEnergy executive: Davis-Besse plant headed for premature closure, [The Blade](#).

— A University of Cincinnati professor wanted to work for Trump's EPA. He ended up demonized — and jobless, [Cincinnati.com](#).

— Trump's solar tariff leaves state renewables targets in limbo, [Bloomberg](#).

— Puerto Rico offers fiscal plan settling debt for pennies on the dollar, [The Washington Post](#).

— Scientists are calling on the American Museum Of Natural History to cut ties with the Mercers, [BuzzFeed](#).

## HAPPENING TODAY

1:10 p.m. — The College of Agriculture, Urban Sustainability and Environmental Sciences and the Citizens' Climate Lobby hold the 2018 [Mid-Atlantic Regional Conference](#), 4200 Connecticut Avenue NW

3:00 p.m. — The Society of Environmental Journalists, George Mason University and the Wilson Center hold an [event](#) on "2018 Journalists' Guide to Energy and Environment," 1300 Pennsylvania Ave NW

## THAT'S ALL FOR ME!

*To view online:*

<https://www.politicopro.com/newsletters/morning-energy/2018/01/trump-takes-the-stage-084081>

## Stories from POLITICO Pro

### World nervously watches Trump's Davos debut [Back](#)

By Louis Nelson | 01/25/2018 11:45 AM EDT

President Donald Trump arrived at the World Economic Forum in Switzerland Thursday a man on a mission: to demonstrate his prowess on the world stage to a mountain town full of political and business leaders skeptical of his administration.

In a pair of bilateral meetings with the prime ministers of Great Britain and Israel, Trump touted his White House's warm ties with each nation, both longtime steadfast U.S. allies. As he entered the forum's hall, Trump declared that he had arrived with a message of "peace and prosperity." He basked in warm praise from Israeli Prime Minister Benjamin Netanyahu and seemingly sought to smooth a reported rift in his relationship with his British counterpart, Theresa May.

That Trump was in attendance at Davos, considered a meeting of international elites where globalism is often championed, seemed strange for a president who campaigned on and has governed with an "America First" agenda that is skeptical of multinational trade agreements and of U.S. participation in international organizations like the United Nations. Trump is the first U.S. president to attend the annual gathering in Switzerland since Bill Clinton in 2000, his final year in office.

"When I decided to come to Davos, I didn't think in terms of elitists or globalists, I thought in terms of lots of people who want to invest lots of money and they're all coming back to the United States. They're coming back to America, and I thought of it much more in those terms," Trump explained in an interview with CNBC. "After I said that I was going, there were massive stories about the elite and the globalists and the planes flying in and everything else. It's not about that. It's about coming to America, investing your money, creating jobs, companies coming in. We're setting records. Every day, we're setting records."

But while Trump's particular style of politics [continues](#) to rattle the international political and economic types who regularly attend Davos, the first year of his presidency seems to have calmed some, at least in the latter group. The U.S. economy has performed well through Trump's first year in office, as have other prominent economies worldwide. Many at Davos predicted the tax cut and reform legislation signed by the president last year will further spur the U.S. economy.

"There's been a lot of warmth, a lot of respect for our country, and a lot of money, billions and billions of dollars is coming into the U.S., and people are very happy with what we've done, not only on the tax bill, but also cutting of regulations, and I think also being a cheerleader for our country," Trump told reporters at a group dinner Thursday evening in Switzerland. "You know, if you're not a cheerleader for your company or for your country, no matter what happens, it's not going to work. And that's what I've been and that's what my whole group has been."

Still, Trump's bombast continues to stir nervousness and the president is not generally highly regarded among those flocking to the Swiss ski town this week. Trump is scheduled to give a speech Friday at the forum, for which Marietje Schaake, a prominent Dutch politician in the European Parliament, offered this prediction: "With low expectations, it will not take much to exceed them," adding that "at the end of the day, while words matter, actions always speak louder than words."

With May, Trump offered the pool of reporters traveling with him at the forum in Davos assurances that the pair continues to share "a really great relationship," that he has "tremendous respect" for his British counterpart and that "the feeling is mutual from the standpoint of liking each other a lot."

Trump said the U.S. and Britain are "joined at the hip" on military issues and told May "there's nothing that would happen to you that we won't be there to fight for you. You know that."

A spokesman for May said the pair discussed the need to cooperate on peacekeeping efforts such as working "to ensure Iran does not develop nuclear weapons."

The leaders, Downing Street said, agreed to continue "to stand side-by-side" in their fight against the Islamic State.

The president's reassurances follow a relatively rocky patch in the U.S.-U.K. "special relationship" that included Trump's abrupt cancellation of a trip to London (placing the blame for that cancellation, incorrectly, on his predecessor, Barack Obama) and his sharing on Twitter of anti-Muslim videos posted by a leader from a British far-right, ultranationalist group. The latter offense earned Trump a rebuke from a May spokesman.

Trump and May directed officials to finalize arrangements for a visit by the U.S. leader to the U.K. sometime this year, May's spokesperson said.

With Netanyahu, the conversation in front of the cameras focused largely on the president's announcement last month that the U.S. would recognize Jerusalem as Israel's capital and begin the process of moving its embassy there. Netanyahu heaped praise on the president for the controversial decision, criticized even by close U.S. allies, telling him that the decision would be "forever etched on the hearts of our people for generations to come."

While Trump's bombastic style, unpredictability and willingness to diverge from the norms of past White House occupants has seemingly injected doubt into U.S. relationships around the globe, the president's stridently pro-Israel positions have strengthened the bond between the two nations, which sunk to a low point during the Obama administration.

Netanyahu in particular praised Trump for the skeptical eye with which he has viewed the landmark nuclear agreement the U.S. helped negotiate with Iran, telling the president and the assembled media that Israel would "back you all the way" should he decide to pull the U.S. from the agreement championed by Obama's White House.

"I've never seen the realistic alliance between the United States, Israel and your other allies in the region as strong, as unified as it is under your leadership," Netanyahu said. "As you finish your first year in office, I want to say that I look forward to continuing our remarkable, tremendous friendship in the years ahead, and I want to express the appreciation of the people of Israel to you. Thank you, Mr. President."

*Cristiano Lima contributed to this report.*

*To view online [click here](#).*

[Back](#)

## **Republicans frustrated by lingering agency vacancies [Back](#)**

By Anthony Adragna | 01/26/2018 05:01 AM EDT

Republican lawmakers are growing impatient with the Trump administration's delays in nominating candidates for energy-related positions across the federal government, creating a vacancy problem that experts say could lead to missed opportunities to put GOP policies into action.

More than a year after President Donald Trump entered the White House, the administration hasn't picked anyone to run key positions such as the office overseeing EPA's Superfund program, a focal point of Administrator Scott Pruitt's agenda. There's no one formally selected to lead the Bureau of Land Management or National Park Service, key positions in rolling out Interior Secretary Ryan Zinke's public lands plans.

"It has to make it just that much more difficult within the agencies to just be so short-teamed," Senate Energy and Natural Resources Chairwoman [Lisa Murkowski](#) (R-Alaska) told POLITICO.

In total, there are currently no nominees for seven of the 17 slots at Interior requiring Senate confirmation. The figure at EPA stands at six of 13 spots, while 11 of 22 positions at the Energy Department have no nominee. There's also been no movement on vacancies within the White House's Office of Science and Technology Policy, including the top spot, the longest that role has gone without a nominee.

The White House did not respond to a request for comment on whether it planned to nominate officials to the vacancies.

Some Republican lawmakers laid the blame on Democrats for drawing out the Senate confirmation process procedurally, which they say created a nomination backlog that has lessened the pressure on Trump to add more names to the waiting list. Others say lengthy confirmation battles that have forced some nominees to wait over a year for a vote have prompted potential candidates to opt of government service.

But whatever the reason, spots critical to the agendas of Cabinet members remain unfilled.

"I hear some of my colleagues just laying the blame right at the feet of the [Democrats], and, when it comes to slowing things down procedurally on the floor, there's clearly blame there," Murkowski said. "But if we don't even have the names that we can process through the committee to get to the floor, then you can't pass that blame off to the Democrats. There are things that need to happen within the administration."

The lingering vacancies perhaps should not be surprising given Trump's vows in a November [interview](#) with Forbes that he didn't intend to fill out agency staffing. "I'm generally not going to make a lot of the appointments that would normally be — because you don't need them," Trump said, calling some of the positions "totally unnecessary."

To date, only 331 Trump administration nominees have been confirmed by the Senate compared to 468 OK'd by the same point in the Obama administration.

Donald Kettl, a professor with the University of Maryland's School of Public Policy, said that while there are some signs of a slowdown of nominations in the Senate — it's taken Trump nominees an average of 72 days for confirmation compared to 54 days for Obama nominees over the same time period — there's not "a lot of evidence" that difference stems primarily from Democratic intransigence.

"Are the Democrats responsible for some of it? Sure," he said. "Are they primarily responsible for the pace of the nominations? No."

Experts say a slow start by the administration in nominating people, delays in completing paperwork for Congress and a packed Senate calendar that included major pushes on health care and taxes also contributed to a slow pace of confirmations.

"Democrats are not to blame on this one," Paul Light, a professor at New York University's Wagner Graduate School of Public Service, said. "Although they do have somewhat more freedom to ask nominees to answer written responses to questions and are demanding more formal confirmation votes, Republicans simply did not have the nominees to send to the floor when they had the muscle. Timing is everything here. Again, steady wins the prize."

Still, lawmakers say the lengthy confirmation battles are making harder to attract people willing to serve in government.

"It's a vicious cycle because if you can't get the assistant secretary of whatever in, then it's hard to get the BLM director in," Sen. [Dan Sullivan](#) (R-Alaska) said. "I know people who have been nominated already who are getting really frustrated. It's demoralizing. They have real lives. They have bills they got to pay. We need to do better."

Other lawmakers said that while they'd like to see the slots filled eventually, the immediate impacts on agency work would be limited.

"Would I like to see them? Yeah. Does it hamper the ability to move the agenda? No," House Natural Resources Chairman Rob Bishop (R-Utah) said. "Many of the acting directors that they have right now in those areas are people that I know and respect and they're moving in the right direction, so I'm comfortable with them."

Some experts disagree, though, and say relying on acting officials to occupy positions requiring Senate confirmation indefinitely has consequences, since nominees undergo strict scrutiny during the process and must prove their credentials, and acting officials don't have the same political capital to move major initiatives.

"When agencies are unstaffed or lacking qualified leadership, it has an acute, corrosive effect," said William Buzbee, a law professor at Georgetown University. "That kind of effect is felt quite quickly."

Lobbying efforts continue behind the scenes from some lawmakers to get the empty slots filled. Senate Environment and Public Works Chairman John Barrasso (R-Wyo.), for example, said he continues to regularly discuss personnel matters with White House staff.

Some experts say the administration may be intentionally keeping some acting officials in positions since they doubt they could pass congressional muster. They point to Albert Kelly, Pruitt's senior adviser on Superfund issues, who joined the agency just weeks after agreeing to be banned from working in the banking industry.

Cary Coglianese, a law professor at the University of Pennsylvania, said it was "troubling" to see the administration relying so heavily on acting officials since Republicans control the Senate.

"When an administration has a Senate majority of the same party and it's still worrying it can't get its nominees through, then it makes you wonder what kind of quality or what kind of views these nominees might have," he said. "It shouldn't be so surprising that a minority party is going to be employ whatever procedural hurdles or delays they have available to them."

Others blame the continued vacancies squarely on Democratic resistance. Congressional Western Caucus Chairman Paul Gosar (R-Ariz.) said the unfilled roles are "no failing" of Trump officials since nominations continue to actually outpace Senate confirmations.

"Vacancies for which there are no pending nominations might be a concern if Senate Democrats were not slow-walking or opposing every nominee proposed — but they are," Gosar said in a statement. "And while it is obviously preferable that an Administration receive the staffing to which it is entitled, the Trump Administration has been able to make remarkable progress on land, resource and energy issues even in the face of that nomination stonewalling."

For their part, Democrats say they aren't surprised by the lagging nominations, and some see it as part of a broader administration to systematically weaken federal agencies through neglect.

"I think they'll stay vacant for a while," House Natural Resources ranking member Raúl M.

Grijalva (D-Ariz.) told POLITICO. "I almost think there's a deliberateness not to do that — to let it through atrophy just die on the vine."

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## **POLITICO Pro Q&A: Senate EPW Chairman John Barrasso** [Back](#)

By Anthony Adragna | 01/25/2018 04:02 PM EDT

Sen. John Barrasso begins his second year atop the Environment and Public Works Committee, and he says he's committed to moving an infrastructure package that he expects will have "presidential commitment and muscle behind it."

In an interview, Barrasso says he's urged administration officials to press President Donald Trump to "put some meat on the bones" of the infrastructure plan during the State of the Union address, and he wants to set deadlines of two years for federal permit approvals for projects.

And Barrasso is taking part in talks to alter the nation's biofuel program, and if legislation to revamp the Renewable Fuel Standard emerges, EPW would give "serious consideration" to proposals to modernize the program.

*The following transcript has been edited for length and clarity.*

**An infrastructure package is a key priority for 2018. Sen. Jim Inhofe said he was "frustrated" the White House's plan has yet to emerge and Sen. John Thune said the president would have to show real leadership to get something done this year. Do you share their concerns?**

At the committee meeting last week we had both Secretary of Transportation [Elaine] Chao, as well as [National Economic Council director] Gary Cohn attending and visiting with us about infrastructure. And this was a bipartisan meeting. We had most of the members — Republicans and Democrats. We're committed — Republicans and Democrats — to getting something done.

It's a big priority for the committee. I think we've had a very successful 2017 with lots of accomplishments. But infrastructure is clearly a main topic to the point that I believe at our retreat next week, we're going to be having a discussion on infrastructure again with the secretary of Transportation.

**So you're optimistic about getting something done even though legislating during an election years can be more difficult?**

I'm committed to working with the administration and with the Democrats, and certainly with all the members of our committee on both sides of the aisle, to get something done. I think it's

important. We have a need in the community and in the country. There's no question about it.

And part of what we're doing with WRDA right now is infrastructure. Water resource development is infrastructure. But you need to deal with the roads, the highways, the bridges, the dams, all of it out there. So, I'm optimistic. We'll be discussing it at the retreat and I hope the president brings it up in the State of the Union. And I mentioned that to both Director Cohn and Secretary Chao that I think it would be good to have the president put some meat on the bones during the State of the Union address next Tuesday.

**Have you ever thought of putting out your own plan since the White House's timeline seems to have slipped?**

We've been working on a plan that I've been working on with the Democrats as well. Many of the hearings that we have have been infrastructure-related. The president has frequently talked about upgrading the infrastructure of the country, and I think we need a robust infrastructure bill with presidential commitment and muscle behind it. And I believe we'll get it.

**Do you see opportunities in the package that emerges to tweak or revisit provisions of the Clean Air Act, Clean Water Act, Endangered Species Act and National Environmental Policy Act?**

So much of what I'm focused on now are the roads and bridges, but clearly you need to be able to get projects done. You need to be able to streamline this whole process so that projects can be both started faster and finished faster, because you want to make sure taxpayers are getting bang for their buck. You need to have things [so] people feel that they're not just being dragged out. It just seems silly when you see some project that could take months to complete but years to permit — people get the fact that that's a sign of Washington not getting its job done.

Things [have to be] approved by a certain period of time — whether that's two years [or] a shorter period of time. And if they can't get the permits done, at what point do you say, "Look, people have made their best faith effort and this government couldn't get permits done?" To me, that says they ought to be approved if the government can't work its way through the process in a short period of time. Most people around the country don't think two years is a short period of time but for government that's setting speed records.

**The perennial issue with infrastructure seems to be paying for it, and I would imagine some of the ideas often floated, like a gas tax hike, are probably non-starters for you. Are there other promising ideas you've seen to date?**

There's a difference between rural and urban. [Public-private partnerships] can work in urban areas. They're not going to work in rural areas. So you need federal funding and commitment for rural areas, which aren't going to lend themselves to the partnerships between the public and the private areas. You almost need to look at the two separately and in our discussions with the administration, they do seem to have the two tracks for an urban versus a rural approach. And funding in that.



**What's it been like working with the Democrats so far in this? Have Ranking Member Tom Carper and his staff been open partners and also looking to get something done?**

Senator Carper is actually a very good partner to work with. He was here visiting with me today for a half an hour in my office. I go visit with him and we visit on the floor frequently. We had four dozen hearings last year, advanced a lot of nominations, passed a lot of different legislation of all different kinds.

We have all these discussions about how to more quickly update and modernize the permitting process and also how to pay for things. His model and mine are a little different on the funding, but we know we need to get this done and find a way to do this. The EPW committee, from a public works standpoint, has had a lot of success in the past. It's done a lot of work in a bipartisan way. I think we've worked very closely, both sides of the aisle, to make sure the people who came in to testify — and clearly I had a lot of people from Wyoming to talk about rural issues and rural needs and why they're unique — but I think every member of the committee would say they've felt they've had an opportunity to bring somebody in from their state to make the case about what their specific needs could be whether it's highways, bridges, dams, water, ports, you name it.

**Have you been participating in the talks between Sen. John Cornyn and other senators on Renewable Fuel Standard issues? And do you think there's a compromise possible on biofuels that can get through your committee?**

I've been part of those discussions, yes.

We need a solution to the problem. The way that the RFS program was put into place, in my opinion, did not visualize where we are today, with a greater amount of fuel efficiency, with the number of electric vehicles. So the system that was designed was one that just viewed greater and greater volumes of gasoline being used. And didn't take into account some of the changes that we've seen with technology.

If a refinery goes bankrupt because of a system that the government put in place after the refinery was built, that's not a system that's worked. So we need to modernize and modernize this to take into account where we are today with the technology and the vehicles and the amount of fuel being consumed.

[Cornyn's] leading the efforts to develop this bipartisan reform bill that all the stakeholders can support and then once that's introduced the committee is going to give it serious consideration.

**A number of the West Coast states have blocked coal export facilities from being built. Is there a role at all for the federal government to intervene?**

I think it's important to be able to export coal. People around the world want to buy energy from America. The president talks about energy dominance and we need to use the resources that we have in this country. We've gone from energy security to energy independence to energy dominance. And to be able to use energy as the geopolitical weapon that it can be and deal with

how [Russian President Vladimir] Putin uses energy as a weapon, I think we need to make sure that we have opportunities to sell to other countries what we have in the United States in abundance. It's good for our jobs, it's good for the economy. Energy, as a resource, it's called the master resource for a reason because of what it powers. It powers our economy. It powers our jobs. And powers the military. So it's an instrument of power. It's a force multiplier, and I think we should use it as such.

I'd like to see those ports opened up. Many of the workers there want those jobs in those areas but you have this division between the workers — many of whom are union workers — and the environmental extremists who are trying to block them. That's where the loggerheads is and we're trying to get those ports open.

**What are your thoughts on being EPW chairman after Year One? Are you enjoying the job so far and how do you balance those responsibilities with your time atop the Senate Republican Policy Committee?**

Wyoming [is] such an energy state and, to me, the most beautiful state in the country — and maybe one of the most beautiful places in the world. So what you know is from the standpoint from the people of Wyoming, we have protected our environment. We have great respect for our environment and the best stewards of the land are the people that live on the land. We have a long history of doing it right and we have multiple use of the land in Wyoming. Half of the land in Wyoming is run and owned by the federal government, so we know what it's like to have such a large federal footprint in the state. And we just believe we ought to be able to use our resources and do it in ways that are respectful of the environment as we have done it.

It's an area that to me is a great deal of focus. It's something I've worked on from the day I showed up in the Senate, the first day I took the oath of office. That hasn't changed. I'm just able to have additional opportunity to bring people back from Wyoming to testify on the topics that are in front of the committee. So I think that helps lend voice to the vision and the values that we have in Wyoming.

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**EPA drops 'once in, always in' policy from key Clean Air Act requirements [Back](#)**

By Alex Guillén | 01/25/2018 06:11 PM EDT

EPA today withdrew a Clinton-era policy that was designed to prevent major emitters like power plants and factories from getting out of tough requirements to limit their toxic air emissions.

In a new [memo](#), EPA air chief Bill Wehrum wrote that the "once in, always in" policy "is contrary to the plain language" of the Clean Air Act. Wehrum revoked a [1995 guidance memo](#) outlining the policy and said EPA would consider new regulations to clarify its interpretation of

the law.

Under the now-revoked guidance, any emitter that qualified as a "major" source of hazardous air pollutants would forever be subject to that tougher standard to comply with MACT rules, even if its emissions dropped low enough to be considered an "area" source subject to fewer or no requirements. Wehrum's memo said the law does not specify that such classifications are permanent.

"EPA has now determined that a major source which takes an enforceable limit on its [potential emissions] and takes measures to bring its HAP emissions below the applicable threshold becomes an area source, no matter when the source may choose to take measures to limit its" potential pollution emissions, Wehrum wrote.

Wehrum argued that the policy shift will actually encourage sources that hesitated to install emission reduction projects to move forward. Environmentalists, however, quickly blasted the change on social media.

The Bush administration twice attempted to change the OIAI policy but never succeeded.

**WHAT'S NEXT:** Wehrum's memo says EPA will "soon publish a Federal Register notice to take comment on adding regulatory text that will reflect EPA's plain language reading of the statute."

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**Brown thumps Trump in final State of the State address** [Back](#)

By David Siders and Carla Marinucci | 01/25/2018 05:57 PM EDT

SACRAMENTO — In a wide-ranging defense of California — and a rebuke of President Donald Trump and the Republican-held Congress — Gov. Jerry Brown on Thursday rallied this bulwark of the Democratic Party to push forward on climate change, immigration and high-speed rail, signaling another year of conflict between Washington and the nation's most populous state.

Delivering his final State of the State address, Brown cast California as a more enlightened alternative to "the poison in our politics" and to "the abysmal approval ratings given to the U.S. Congress."

He called for the state to complete a massive high-speed rail project reviled by many Republicans in Washington, and to put 5 million zero-emission vehicles on California roads by 2030.

"Despite what is widely believed by some of the most powerful people in Washington, the

science of climate change is not in doubt," the Democratic governor told a joint session of the Legislature here. "All nations agree except one, and that is solely because of one man: our current president."

Brown said, "Here in California, we follow a different path."

Brown and the state's heavy bench of Democratic officeholders have feuded with Trump since the Republican president took office last year. But tensions heightened this month, with the Trump administration threatening to undermine the state's marijuana market, proposing oil drilling off the California coast and vowing to dramatically increase immigration enforcement in the state.

On Wednesday, the state attorney general, Xavier Becerra, filed litigation challenging the Trump administration's repeal of an Obama-era hydraulic fracturing regulation, while Trump took aim at San Francisco and other sanctuary cities that he said are the "best friend of gangs and cartels like MS-13."

While relatively cautious in his criticism of Trump, Brown's agenda — combating climate change, health care, defending a state gas tax increase — stands starkly at odds with the White House, and the governor implicitly cut at Trump.

Recalling headlines that derided California as "ungovernable" and "doomed" when Brown inherited a yawning budget deficit as he took office in 2011, Brown said, "Even today, you will find critics who claim the California dream is dead. But I'm used to that."

Now California enjoys a budget surplus, and Brown pointed to the state's approval of a water bond, a budget reserve and a cap-and-trade extension, among other legislative achievements, as evidence "that some American governments actually can get stuff done."

Heralding crowds that participated in Women's March events this month and activists who champion the cause of undocumented young people, Brown said, "In all this, California was in the forefront, showing the way."

In a reflective address — at nearly 30 minutes, unusually long for Brown — the governor acknowledged Trump's approval of "substantial assistance" in disaster aid after California's devastating wildfires and mudslides.

But Brown excoriated the Republican majority in Washington for its attempt to undo health care legislation on which California relies for billions of dollars in federal aid.

"Thank God for John McCain, Lisa Murkowski and Susan Collins," he said. "Along with the Democrats, they prevailed and protected health care for tens of millions of Americans."

For Brown, a fourth-term governor who abandoned his own presidential ambitions after running three times for the White House, the speech served as a reminder of the accomplishments of his final terms, but also the uncertainty of his legacy as he prepares to leave office in January 2019.

Brown is almost sure to be replaced by a Democrat keeping with his positions on climate change and immigration. But as Brown prepares to exit public life, California's poverty rate remains the highest in the nation when adjusted for the cost of living, and the state's tax system relies heavily on its top earners, a major source of volatility. Brown's two signature infrastructure initiatives — building high-speed rail and a water conveyance system — are also mired in uncertainty, with multibillion price tags and fierce political opposition to both projects.

Earlier this month, California officials said the estimated cost of an initial leg of the project in California's Central Valley had alone climbed \$2.8 billion, throwing into doubt the state's cost estimate for the overall project of about \$64 billion. The project will almost certainly require additional federal money, which proponents acknowledge is unlikely while Republicans control the House.

On Thursday, Brown said, "I make no bones about it. I like trains, and I like high-speed trains even better."

"Yes, it costs a lot of money," he said. "But it's still cheaper and more convenient than expanding airports, which nobody wants to do, and building new freeways."

Brown was flanked on the rostrum by two of the several Democrats who are bidding to succeed him. Many of those candidates, including the front-runner, Lt. Gov. Gavin Newsom, have been more strident than Brown in their rhetoric deriding Trump, suggesting animosity between the state and Washington may only intensify.

After Brown's remarks, Newsom said Brown's speech underscored the challenges ahead for California leaders of the next generation.

"It's a baton to be passed," he said, one that emphasizes "success is not a definition — it's a direction."

Brown, governor before from 1975 to 1983, drew loud applause in the Assembly chambers, and even Republicans praised him for his fiscal moderation. But Republican Assemblywoman Catharine Baker said she was concerned "to see him double down on high-speed rail," while Republican Assembly Leader Brian Dahle said Brown failed to adequately address the rising cost of living in the state.

"Some people are spending 50 percent of their pay on rent," Dahle said. With increasing taxes, Dahle said, "they're raising revenues off the back of people here."

Yet Republicans represent a small minority in the California Legislature and have little influence in state politics. And Brown, with a favorable approval rating and millions of dollars remaining in his campaign war chest, has avoided lame-duck treatment entering his final year. He pledged to "do everything in my power" to defeat an effort to repeal a gas tax increase.

Asked as he left the lectern what his father, the late Gov. Edmund G. "Pat" Brown, would say

about his final speech, Brown said, "Persistence."

Then asked if he would run for office again, Brown — who has said before that he will not run for president in 2020 — offered a familiar quip.

"You never know," the 79-year-old said. "Never say never."

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### **California to sue over federal fracking rule repeal** [Back](#)

By Alex Guillén | 01/24/2018 12:00 PM EDT

California will sue the Trump administration for repealing the Obama-era fracking rule, California Attorney General Xavier Becerra announced today.

The repeal of the 2015 Bureau of Land Management regulation was [formalized](#) late last month.

"They didn't follow the law, they didn't let the law or the facts change their way in their zeal to repeal what was a commonsense measure," Becerra told reporters on a conference call. California's lawsuit will argue Interior violated the Administrative Procedure Act by failing to justify the repeal, and Becerra said the state also will pursue NEPA violations over the environmental impacts of fracking.

"I think there is plenty of reason to doubt that the fracking repeal engaged in by the administration will withstand scrutiny in a court," Becerra added.

The Obama fracking rule was struck down in 2016 by a federal judge in Wyoming who said Interior did not have the authority to regulate the practice at all. That issue was on appeal to the 10th Circuit, but that case is expected to be dismissed as moot and the lower court's ruling vacated now that the rule has been repealed.

Becerra sidestepped questions about how California could win when the underlying rule was itself in legal jeopardy, saying the lawsuit over the repeal "is going to stand on its own."

**WHAT'S NEXT:** California will file the lawsuit over the fracking rule's repeal.

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## **South Korea asks for WTO consultation with U.S. over washing machine, solar import curbs** [Back](#)

By Adam Behsudi | 01/25/2018 10:48 AM EDT

South Korea has filed two separate requests at the WTO for consultations with the United States on recent restrictions on imports of [washing machines](#) and [solar products](#), arguing that the actions violate several international trade rules.

The requests made on Wednesday begins a process under the WTO's safeguards agreement. The requests are different from the WTO's dispute settlement process but could still lead to South Korea retaliating against the U.S. actions if the two countries can't settle their differences in 30 days.

President Donald Trump this week [approved](#) import restrictions on washing machines and solar products under Section 201 of the Trade Agreement of 1974.

Countries are allowed a certain amount of flexibility to impose safeguards under WTO rules, but South Korea argues that the U.S. action breaches a number of provisions under the safeguards agreement and the General Agreement on Tariffs and Trade.

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**To:** Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]; Harlow, David[harlow.david@epa.gov]  
**From:** Woods, Clint  
**Sent:** Thur 1/25/2018 2:23:11 PM  
**Subject:** OIAI Rollout

Should be complementary with Arkansas regional haze news –

**Ex. 5 - Deliberative Process**

# **Ex. 5 - Deliberative Process**

**To:** Harlow, David[harlow.david@epa.gov]  
**From:** Lamason, Bill  
**Sent:** Thur 1/25/2018 1:36:10 PM  
**Subject:** Paragraph\_01\_25\_2018.docx  
Paragraph 01 25 2018.docx

David, Some edits to consider. Thanks! Bill

**To:** Harlow, David[harlow.david@epa.gov]  
**From:** Gunasekara, Mandy  
**Sent:** Thur 1/25/2018 12:45:36 AM  
**Subject:** Re: Revised Draft OIAI Memo

Great work on this and glad we are able to respond so quickly to the WH feedback. I think there is one small typo in the last footnote, second sentence. There is an extra “be” before “construed.”

Sent from my iPhone

On Jan 24, 2018, at 6:59 PM, Harlow, David <harlow.david@epa.gov> wrote:

Peter,

For your awareness. See what is now the next-to-last paragraph on page 4.

## **Ex. 5 - Deliberative Process**

Thanks for your input this evening. It helped me to focus my thinking on what I wanted to do with this.

**David S. Harlow**  
**Senior Counsel**

**Immediate Office of the Assistant Administrator**  
**Office of Air and Radiation, USEPA**  
**WJC-N Room 5409K**

**1200 Pennsylvania Avenue NW**  
**Washington, DC 20460**  
**202-564-1233**

[Harlow.David@epa.gov](mailto:Harlow.David@epa.gov)

**From:** Wehrum, Bill  
**Sent:** Wednesday, January 24, 2018 6:50 PM  
**To:** Szabo, Aaron L. EOP/CEQ <[Aaron.L.Szabo@ceq.eop.gov](mailto:Aaron.L.Szabo@ceq.eop.gov)>  
**Cc:** Gunasekara, Mandy <[Gunasekara.Mandy@epa.gov](mailto:Gunasekara.Mandy@epa.gov)>; Harlow, David <[harlow.david@epa.gov](mailto:harlow.david@epa.gov)>  
**Subject:** Revised Draft OIAI Memo

Aaron – Please see the attached revised version. Please let me know if you have any further thoughts. Thanks for your input.

<Reclassification of Major Sources as Area Sources Under Section 112\_.pdf>

**To:** Szabo, Aaron L. EOP/CEQ; **Ex. 6 - Personal Privacy**  
**Cc:** Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]; Harlow, David[harlow.david@epa.gov]  
**From:** Wehrum, Bill  
**Sent:** Wed 1/24/2018 11:50:18 PM  
**Subject:** Revised Draft OIAI Memo  
Reclassification of Major Sources as Area Sources Under Section 112 .pdf

Aaron – Please see the attached revised version. Please let me know if you have any further thoughts. Thanks for your input.

**To:** Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]; Tsirigotis, Peter[Tsirigotis.Peter@epa.gov]  
**Cc:** Harlow, David[harlow.david@epa.gov]  
**From:** Wehrum, Bill  
**Sent:** Wed 1/24/2018 11:20:49 PM  
**Subject:** OIAI Memo

I got feedback from the interagency review.

## **Ex. 5 - Deliberative Process**

## **Ex. 5 - Deliberative Process**

### **Ex. 5 - Deliberative Process**

They agree that it would be good to get it out tomorrow.



**From:** Lewis, Josh  
**Location:** WJC-N 5400 + RTP Video  
**Importance:** Normal  
**Subject:** Once In, Always In Comms Discussion  
**Start Date/Time:** Wed 1/24/2018 9:45:00 PM  
**End Date/Time:** Wed 1/24/2018 10:15:00 PM

**To:** Bill Wehrum, David Harlow, Mandy Gunasekara, Liz Bowman, John Millett, Isabel DeLuca; Tsirigotis, Peter; Koerber, Mike

**To:** Bolen, Brittany[bolen.brittany@epa.gov]; Dravis, Samantha[dravis.samantha@epa.gov]; Lovell, Will (William)[lovell.william@epa.gov]  
**Cc:** Harlow, David[harlow.david@epa.gov]; Dominguez, Alexander[dominguez.alexander@epa.gov]  
**From:** Gunasekara, Mandy  
**Sent:** Wed 1/24/2018 8:03:07 PM  
**Subject:** Once In Always In Memo  
[OI AI DRAFT MEMO 2018 01 24.docx](#)

Attached is the almost final draft. The goal is to send out either tomorrow or Friday (likely Friday). Team OAR is meeting with our comms folks plus Liz to talk about messaging and roll-out. I'm happy to share the press plan from that meeting as well once drafted. Please let me know of any questions/concerns.

**Mandy M. Gunasekara**

Principal Deputy Assistant Administrator

Office of Air and Radiation

US Environmental Protection Agency

**To:** Catanzaro, Michael J. EOP/WHO[Michael.J.Catanzaro@who.eop.gov]; Moran, John S. EOP/WHO (John.S.Moran@who.eop.gov)[John.S.Moran@who.eop.gov]; Szabo, Aaron L. EOP/CEQ[Aaron.L.Szabo@ceq.eop.gov]  
**Cc:** Wehrum, Bill[Wehrum.Bill@epa.gov]; Harlow, David[harlow.david@epa.gov]  
**From:** Gunasekara, Mandy  
**Sent:** Wed 1/24/2018 5:17:52 PM  
**Subject:** Once In Always In Memo  
OI AI DRAFT MEMO 2018 01 24.docx

Hi All –

Attached is our close to final draft of the Once in Always in Memo. The goal is to get it out this week (so tomorrow or Friday – likely Friday). Please take a look and let us know of any concerns. We are meeting with the press team later today to talk about messaging and roll-out. I will send around press docs from that meeting as well – TPs, press release and outreach plan.

I just touched base with Aaron so he can fill in on some of the additional details. Also, I'm always available on my cell:

Ex. 6 - Personal Privacy

Best,

Mandy

**Mandy M. Gunasekara**

Principal Deputy Assistant Administrator

Office of Air and Radiation

US Environmental Protection Agency

**From:** Lamason, Bill  
**Location:** WJC-N 5415 + Dial In: Ex. 6 - Personal Privacy **Conference ID:** Ex. 6 - Personal Privacy **Participant**  
**Code:** Ex. 6 - Personal Privacy  
**Importance:** Normal  
**Subject:** Accepted: General Discussion  
**Start Date/Time:** Thur 1/18/2018 9:00:00 PM  
**End Date/Time:** Thur 1/18/2018 9:30:00 PM

Emily, The subject (for the message box) is consultation with OGC/ARLO on OIAI paths forward.  
Thanks! Bill

**To:** Dravis, Samantha[dravis.samantha@epa.gov]; Greenwalt, Sarah[greenwalt.sarah@epa.gov]; Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]; Brown, Byron[brown.byron@epa.gov]; Baptist, Erik[Baptist.Erik@epa.gov]; Beck, Nancy[Beck.Nancy@epa.gov]; Forsgren, Lee[Forsgren.Lee@epa.gov]; Fotouhi, David[Fotouhi.David@epa.gov]; Darwin, Veronica[darwin.veronica@epa.gov]; Jackson, Ryan[jackson.ryan@epa.gov]; Bolen, Brittany[bolen.brittany@epa.gov]; Bowman, Liz[Bowman.Liz@epa.gov]; Harlow, David[harlow.david@epa.gov]; Wehrum, Bill[Wehrum.Bill@epa.gov]; Burke, Marcella[burke.marcella@epa.gov]; Bertrand, Charlotte[Bertrand.Charlotte@epa.gov]  
**Cc:** Nickerson, William[Nickerson.William@epa.gov]; Boyle, Kathryn[Boyle.Kathryn@epa.gov]; Kime, Robin[Kime.Robin@epa.gov]  
**From:** Owens, Nicole  
**Sent:** Fri 1/12/2018 4:51:38 PM  
**Subject:** upcoming regulatory activities and inactive actions list  
[ADP Tracker Report 1\\_11\\_2018.docx](#)  
[RegAgenda\\_Inactive\\_12-11-2017.docx](#)

Good Afternoon –

OP is pleased to provide you with two reports that may help you manage your upcoming regulatory actions. The first report (ADP Tracker Report 1\_11\_2018) is based on data in ADP Tracker and the report includes information on actions with open comment periods, actions under OMB review, actions planned for signature and OMB review between now and February 9, and planned ADP milestones between now and February 9.

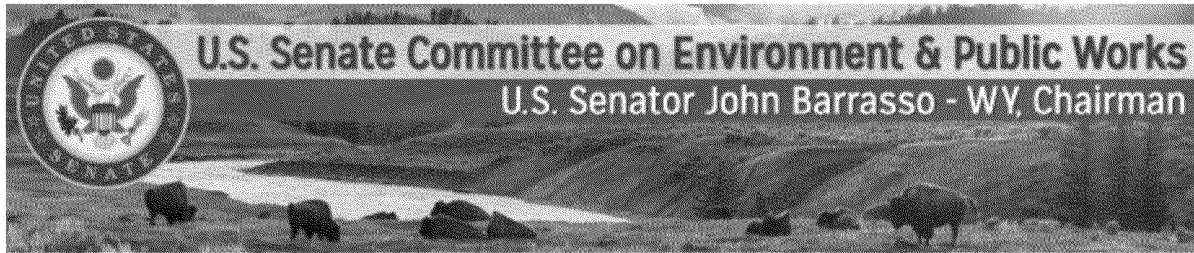
The second report (RegAgenda\_Inactive....) contains the list of actions that were considered “inactive” when the Fall Reg Agenda published. We are asking that you closely examine this list to see (1) what actions can be “completed” before the next agenda publishes in April or May or (2) whether any of these actions should be moved to “active” in the next agenda. Some actions may require a separate Federal Register notice to formally close the book on them. If that is the case, we are asking that you take the initiative and publish these notices before April or May. If there is anything OP can do to help, please let us know.

Thanks,

Nicole

**To:** Harlow, David[harlow.david@epa.gov]; Woods, Clint[woods.clint@epa.gov]; Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]; Wehrum, Bill[Wehrum.Bill@epa.gov]  
**From:** Bowman, Liz  
**Sent:** Tue 1/9/2018 7:00:38 PM  
**Subject:** FW: Senators Call on EPA to Remove Burdensome “Once-In-Always-In” Policy

**From:** Danylak, Mike (EPW) [mailto:Mike\_Danylak@epw.senate.gov]  
**Sent:** Tuesday, January 9, 2018 12:22 PM  
**To:** Danylak, Mike (EPW) <Mike\_Danylak@epw.senate.gov>  
**Subject:** Senators Call on EPA to Remove Burdensome “Once-In-Always-In” Policy



For Immediate Release:  
~202.224.1049

Contact: Mike Danylak

January 9, 2018

[Mike\\_Danylak@EPW.Senate.Gov](mailto:Mike_Danylak@EPW.Senate.Gov)

## **Senators Call on EPA to Remove Burdensome “Once-In-Always-In” Policy**

WASHINGTON, D.C. — Today, U.S. Senator John Barrasso (R-WY), chairman of the Senate Committee on Environment and Public Works (EPW) and Sen. Shelley Moore Capito (R-WV), chairman of the EPW Subcommittee on Clean Air and Nuclear Safety, sent a letter to Environmental Protection Agency (EPA) Administrator Scott Pruitt asking him to withdraw a punishing policy known as “once-in-always-in.”

The current EPA policy maintains that once a factory, plant, or other type of facility becomes subject to Maximum Achievable Control Technology (MACT) standards under the Clean Air Act, it remains subject to the standards, even if it lowers its emissions below the levels that triggered the standards in the first place.

In testimony at an EPW committee hearing on Nov. 15, 2017, the “once-in-always-in” policy was identified as needing withdrawal to encourage greater emissions reductions at factories and facilities across the country.

Withdrawing this policy would allow facilities that lower their emissions below the MACT-triggering threshold to invest in modernization and other projects, rather than spend money complying with unnecessary rules.

Read the full letter [here](#) and below.

Dear Administrator Pruitt:

We write to request that you rescind a current EPA policy that disincentivizes air emissions reductions. On November 15, 2017, the Committee held a hearing entitled, “Promoting American Leadership in Reducing Air Emissions Through Innovation.” In testimony during that hearing, the so-called “once-in-always-in” policy under the Clean Air Act was identified as a policy that discourages emissions reductions.

The 1995 policy requires a source to comply with stringent emissions standards even if the source later lowers its emissions below the “major source” thresholds that triggered the standards in the first place. In the enclosed submissions to the November 15<sup>th</sup> hearing record, the National Association of Manufacturers and the American Coatings Association (ACA) highlighted the practical effects of the policy. As ACA explains, “resources

spent on compliance could be used instead for [research and development], or modernization activities.”

EPA can rescind this policy, which was issued under Section 112 of the Clean Air Act, without any legislative changes. As the Chairmen of the Committee and Subcommittee of jurisdiction over the Clean Air Act, we request that you incentivize additional hazardous air pollutant emissions reductions by promptly withdrawing this policy. If you have additional questions about the Committee’s hearing that reviewed this issue, please contact Elizabeth Horner of the Committee’s staff at 202-224-6176.

Sincerely,

John Barrasso, M.D.

Chairman

Subcommittee on Clean Air and Nuclear Safety

Shelley Moore Capito

Chairman

**Background Information:**

On Nov. 15, 2017, the EPW Committee held a hearing titled “Promoting American Leadership in Reducing Air Emissions through Innovation.” Testimony at the hearing identified the EPA’s “once-in-always-in” as a policy that discourages modernization and emissions reduction efforts.

###

<http://epw.senate.gov>



[Twitter](#) | [YouTube](#)

**To:** Wehrum, Bill[Wehrum.Bill@epa.gov]; Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]; Harlow, David[harlow.david@epa.gov]; Dominguez, Alexander[dominguez.alexander@epa.gov]  
**Cc:** Lyons, Troy[lyons.troy@epa.gov]; Frye, Tony (Robert)[frye.robert@epa.gov]  
**From:** Palich, Christian  
**Sent:** Tue 1/9/2018 5:08:56 PM  
**Subject:** FW: Letter to Administrator Pruitt Requesting Withdrawal of Once-In-Always-In Policy  
[NAM Testimony of Ross Eisenberg 11.15.17.pdf](#)  
[Barrasso Eisenberg QFR Responses 11.15.2017.pdf](#)  
[ACA Letter to EPW final.pdf](#)  
[20180109 Letter from Barrasso and Capito on Once-In-Always-In.pdf](#)

Hi All,

FYI. We just received this letter from Chairman Barrasso and the EPW committee.

Bes Regards,

Christian R. Palich

*Deputy Associate Administrator*

*Office of Congressional & Intergovernmental Affairs*

*U.S Environmental Protection Agency*

*O: 202.564.4944*

*C: 202.306.4656*

*E: Palich.Christian@epa.gov*

**From:** Horner, Elizabeth (EPW) [mailto:Elizabeth\_Horner@epw.senate.gov]  
**Sent:** Tuesday, January 9, 2018 12:06 PM  
**To:** Lyons, Troy <lyons.troy@epa.gov>; Palich, Christian <palich.christian@epa.gov>  
**Cc:** Cone, Travis (Capito) <Travis\_Cone@capito.senate.gov>; Russell, Richard (EPW) <Richard\_Russell@epw.senate.gov>  
**Subject:** Letter to Administrator Pruitt Requesting Withdrawal of Once-In-Always-In Policy

Christian and Troy,

Attached is an electronic copy of a letter from EPW Chairman Barrasso and EPW Subcommittee on Clean Air and Nuclear Safety Chairman Capito to Administrator Pruitt requesting that he withdraw the so-called “once-in-always-in” policy. Enclosures to the letter are also attached. We are sending a hard copy by mail as well.

We would appreciate if you could please share with the Administrator and any other appropriate staff.

I would be happy to answer any questions about the letter or provide you with more information.

Best,

Elizabeth

Elizabeth L. Horner

Majority Counsel

Senate Committee on Environment and Public Works

[Elizabeth\\_Horner@epw.senate.gov](mailto:Elizabeth_Horner@epw.senate.gov)

(202) 224-7841

**To:** Harlow, David[harlow.david@epa.gov]; Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]  
**From:** Dominguez, Alexander  
**Sent:** Mon 1/8/2018 9:13:01 PM  
**Subject:** Once In Always In

I'm 99% certain on this, but can one of you confirm for me the NSR memo is not going out today? OCIR just called and seemed to think it was being released today.

**Alex Dominguez**

Policy Analyst to the Principal Deputy

Office of Air and Radiation

U.S. Environmental Protection Agency

**To:** Harlow, David[harlow.david@epa.gov]  
**From:** Woods, Clint  
**Sent:** Fri 1/26/2018 2:17:27 PM  
**Subject:** Fwd: Reducing Regulatory Burdens: EPA withdraws "once-in always-in" policy for major sources under Clean Air Act

Begin forwarded message:

**From:** "Robert.Hodanbosi@epa.ohio.gov" <Robert.Hodanbosi@epa.ohio.gov>  
**Date:** January 26, 2018 at 7:48:16 AM CST  
**To:** "Cory, Preston (Katherine)" <Cory.Preston@epa.gov>  
**Cc:** "Woods, Clint" <woods.clint@epa.gov>  
**Subject:** RE: Reducing Regulatory Burdens: EPA withdraws "once-in always-in" policy for major sources under Clean Air Act

Thank you – this is very good news.

Bob

**From:** Cory, Preston (Katherine) [mailto:Cory.Preston@epa.gov]  
**Sent:** Thursday, January 25, 2018 5:08 PM  
**Cc:** Woods, Clint <woods.clint@epa.gov>  
**Subject:** FW: Reducing Regulatory Burdens: EPA withdraws "once-in always-in" policy for major sources under Clean Air Act

All,

FYI below. Please let me know if you have any questions!

Regards,

Preston Cory

**K. Preston Cory**

Special Advisor

Office of the Administrator, Congressional and Intergovernmental Relations

U.S. Environmental Protection Agency

202-579-4281

**From:** EPA Press Office [<mailto:press=epa.gov@cmail20.com>] **On Behalf Of** EPA Press Office

**Sent:** Thursday, January 25, 2018 4:55 PM

**To:** Cory, Preston (Katherine) <[Cory.Preston@epa.gov](mailto:Cory.Preston@epa.gov)>

**Subject:** Reducing Regulatory Burdens: EPA withdraws “once-in always-in” policy for major sources under Clean Air Act

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## **Reducing Regulatory Burdens: EPA withdraws “once-in always-in” policy for major sources under Clean Air Act**

**WASHINGTON** (January 25, 2018) – Today, the U.S. Environmental Protection Agency (EPA) issued a guidance memorandum withdrawing the “once-in always-in” policy for the classification of major sources of hazardous air pollutants under section 112 of the Clean Air Act. With the new guidance, sources of hazardous air pollutants previously classified as “major sources” may be reclassified as “area” sources when the facility limits its potential to emit below major source thresholds.

“This guidance is based on a plain language reading of the statute that is in line with EPA’s guidance for other provisions of the Clean Air Act,” **said Bill Wehrum, assistant administrator of EPA’s Office of Air and Radiation.** “It will reduce regulatory burden for industries and the states, while continuing to ensure stringent and effective controls on hazardous air pollutants.”

Today’s memo is another step by which EPA is reducing unnecessary regulatory burdens that deterred

innovative efforts to improve the environment. The “once in always in” policy has been a longstanding disincentive for sources to implement voluntary pollution abatement and prevention efforts, or to pursue technological innovations that would reduce hazardous air pollution emissions. States, state organizations and industries have frequently requested rescission of this policy, which was one of the most commonly cited requests in response to President Trump’s Executive Order 13777. Today’s EPA action is an important step in furtherance of the president’s regulatory reform agenda while providing a meaningful incentive for investment in HAP reduction activities and technologies.

The Clean Air Act defines a “major source” as a one that emits, or has the potential to emit, 10 tons per year of any hazardous air pollutant, or 25 tons per year or more of any combination of hazardous air pollutants. Sources with emissions below this threshold are classified as “area sources.” Different control standards apply to the source depending on whether or not it is classified as a “major source” or an “area source.”

In a 1995 memo, EPA established a “once-in always-in” policy that determined that any facility subject to major source standards would always remain subject to those standards, even if production processes changed or controls were implemented that eliminated or permanently reduced that facility’s potential to emit hazardous air pollutants.

Today’s memo finds that EPA had no statutory authority under the Clean Air Act to place a time limit on when a facility may be determined to be an area source, and that a plain language reading of the Act must allow facilities to be reclassified as area sources once their potential to emit hazardous air pollutants falls below the levels that define major sources.

EPA anticipates that it will soon publish a Federal Register notice to take comment on adding regulatory text that will reflect EPA’s plain language reading of the statute as discussed in this memorandum.

More information is available online at <https://www.epa.gov/stationary-sources-air-pollution/national-emission-standards-hazardous-air-pollutants-neshap-9>

<https://na01.safelinks.protection.outlook.com/?url=http://usenvironmentalprotectionagency.cmail20.com/t/l-offhjkh-fuulrdlik-y/&data=02|01|Robert.Hodanbosi@epa.ohio.gov|f8fa5f7dee1d47a0878408d56440235c|50f8fcc494d84f07>

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**Did You Know:** Children of parents who talk to their teens about drugs are up to 50% less likely to use. Start the conversation: [StartTalking.Ohio.Gov](http://StartTalking.Ohio.Gov)

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**To:** Harlow, David[harlow.david@epa.gov]  
**From:** Woods, Clint  
**Sent:** Wed 1/24/2018 1:39:58 PM  
**Subject:** FW:

-----Original Message-----

From: Wehrum, Bill  
Sent: Wednesday, January 24, 2018 8:35 AM  
To: Dravis, Samantha <dravis.samantha@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Woods, Clint <woods.clint@epa.gov>  
Subject: RE:

A OIAI memo will be ready to sign this week. CTGs should be ready within a few days.

-----Original Message-----

From: Dravis, Samantha  
Sent: Wednesday, January 24, 2018 8:03 AM  
To: Wehrum, Bill <Wehrum.Bill@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Woods, Clint <woods.clint@epa.gov>  
Subject:

When can we expect the Once in Always In memo as well as CTGs to be finalized? Just want to give SP an update in our planning meeting.

Sent from my iPad

**From:** Rodman, Sonja  
**Location:** WJC-N 5415 + Dial: Ex. 6 - Personal Privacy **Participant Code:** Ex. 6 - Personal Privacy  
**Importance:** Normal  
**Subject:** Accepted: Once in Always in Discussion  
**Start Date/Time:** Wed 1/24/2018 2:30:00 PM  
**End Date/Time:** Wed 1/24/2018 3:00:00 PM

**From:** Jordan, Scott

**Location:** WJC-N 5415 + Dial: Ex. 6 - Personal Privacy Participant Code: Ex. 6 - Personal Privacy

**Importance:** Normal

**Subject:** Accepted: Once in Always in Discussion

**Start Date/Time:** Wed 1/24/2018 2:30:00 PM

**End Date/Time:** Wed 1/24/2018 3:00:00 PM

**From:** Lamason, Bill

**Location:** WJC-N 5415 + Dial Ex. 6 - Personal Privacy **Participant Code:** Ex. 6 - Personal Privacy

**Importance:** Normal

**Subject:** Accepted: Once in Always in Discussion

**Start Date/Time:** Wed 1/24/2018 2:30:00 PM

**End Date/Time:** Wed 1/24/2018 3:00:00 PM

**From:** DCRoomARN5415PolyPCTB/DC-ARN-OAR  
**Location:** WJC-N 5415 + Dial: Ex. 6 - Personal Privacy **Participant Code:** Ex. 6 - Personal Privacy  
**Importance:** Normal  
**Subject:** Accepted: Once in Always in Discussion  
**Start Date/Time:** Wed 1/24/2018 2:30:00 PM  
**End Date/Time:** Wed 1/24/2018 3:00:00 PM

**Your request was accepted.**

---

Sent by Microsoft Exchange Server 2016

**To:** Harlow, David[harlow.david@epa.gov]  
**From:** POLITICO Pro Energy Whiteboard  
**Sent:** Thur 1/25/2018 11:12:55 PM  
**Subject:** EPA drops 'once in, always in' policy from key Clean Air Act requirements

By Alex Guillén

01/25/2018 06:11 PM EDT

EPA today withdrew a Clinton-era policy that was designed to prevent major emitters like power plants and factories from getting out of tough requirements to limit their toxic air emissions.

In a new [memo](#), EPA air chief Bill Wehrum wrote that the "once in, always in" policy "is contrary to the plain language" of the Clean Air Act. Wehrum revoked a [1995 guidance memo](#) outlining the policy and said EPA would consider new regulations to clarify its interpretation of the law.

Under the now-revoked guidance, any emitter that qualified as a "major" source of hazardous air pollutants would forever be subject to that tougher standard to comply with MACT rules, even if its emissions dropped low enough to be considered an "area" source subject to fewer or no requirements. Wehrum's memo said the law does not specify that such classifications are permanent.

"EPA has now determined that a major source which takes an enforceable limit on its [potential emissions] and takes measures to bring its HAP emissions below the applicable threshold becomes an area source, no matter when the source may choose to take measures to limit its" potential pollution emissions, Wehrum wrote.

Wehrum argued that the policy shift will actually encourage sources that hesitated to install emission reduction projects to move forward. Environmentalists, however, quickly [blasted the change](#) on social media.

The Bush administration twice attempted to change the OIAI policy but never succeeded.

**WHAT'S NEXT:** Wehrum's memo says EPA will "soon publish a Federal Register notice to take comment on adding regulatory text that will reflect EPA's plain language reading of the statute."

*To view online:*

<https://www.politicopro.com/energy/whiteboard/2018/01/epa-drops-once-in-always-in-policy-from-key-clean-air-act-requirements-480570>

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**<https://www.politicopro.com/settings>**

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This email was sent to harlow.david@epa.gov by: POLITICO, LLC 1000 Wilson Blvd.  
Arlington, VA, 22209, USA

---



**To:** Harlow, David[harlow.david@epa.gov]  
**From:** EPA Press Office  
**Sent:** Thur 1/25/2018 9:54:51 PM  
**Subject:** Reducing Regulatory Burdens: EPA withdraws “once-in always-in” policy for major sources under Clean Air Act

EPA issued a guidance memorandum withdrawing the “once-in always-in” policy for the classification of major sources of hazardous air pollutants under section 112 of the Clean Air Act.

## Reducing Regulatory Burdens: EPA withdraws “once-in always-in” policy for major sources under Clean Air Act

**WASHINGTON** (January 25, 2018) – Today, the U.S. Environmental Protection Agency (EPA) issued a guidance memorandum withdrawing the “once-in always-in” policy for the classification of major sources of hazardous air pollutants under section 112 of the Clean Air Act. With the new guidance, sources of hazardous air pollutants previously classified as “major sources” may be reclassified as “area” sources when the facility limits its potential to emit below major source thresholds.

“This guidance is based on a plain language reading of the statute that is in line with EPA’s guidance for other provisions of the Clean Air Act,” **said Bill Wehrum, assistant administrator of EPA’s Office of Air and Radiation.** “It will reduce regulatory burden for industries and the states, while continuing to ensure stringent and effective controls on hazardous air pollutants.”

Today’s memo is another step by which EPA is reducing unnecessary regulatory burdens that deterred innovative efforts to improve the environment. The “once in always in” policy has been a longstanding disincentive for sources to implement voluntary pollution abatement and prevention efforts, or to pursue technological innovations that would reduce hazardous air pollution emissions. States, state organizations and industries have frequently requested rescission of this policy, which was one of the most commonly cited requests in response to President Trump’s Executive Order 13777. Today’s EPA action is an important step in furtherance of the president’s regulatory reform agenda while providing a meaningful incentive for investment in HAP reduction activities and technologies.

The Clean Air Act defines a “major source” as a one that emits, or has the potential to emit, 10 tons per year of any hazardous air pollutant, or 25 tons per year or more of any combination of hazardous air pollutants. Sources with emissions below this threshold are classified as “area sources.” Different control standards apply to the source depending on whether or not it is classified as a “major source” or an “area source.”

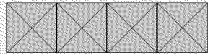
In a 1995 memo, EPA established a “once-in always-in” policy that determined that any facility subject to major source standards would always remain subject to those standards, even if production processes changed or controls were implemented that eliminated or permanently reduced that facility’s potential to emit hazardous air pollutants.

Today’s memo finds that EPA had no statutory authority under the Clean Air Act to place a time limit on when a facility may be determined to be an area source, and that a plain language reading of the Act must allow facilities to be reclassified as area sources once their potential to emit hazardous air pollutants falls below the levels that define major sources.

EPA anticipates that it will soon publish a Federal Register notice to take comment on adding regulatory text that will reflect EPA's plain language reading of the statute as discussed in this memorandum.

More information is available online at <https://www.epa.gov/stationary-sources-air-pollution/national-emission-standards-hazardous-air-pollutants-neshap-9>

[Visit The EPA's Newsroom](#)



U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue Northwest  
Washington, D.C. 20004

[Unsubscribe](#)

**To:** Dominguez, Alexander[dominguez.alexander@epa.gov]  
**Cc:** Lyons, Troy[lyons.troy@epa.gov]; Wehrum, Bill[Wehrum.Bill@epa.gov]; Harlow, David[harlow.david@epa.gov]; Woods, Clint[woods.clint@epa.gov]; Palich, Christian[palich.christian@epa.gov]; Ringel, Aaron[ringel.aaron@epa.gov]; Shimmin, Kaitlyn[shimmin.kaitlyn@epa.gov]  
**From:** Gunasekara, Mandy  
**Sent:** Thur 1/25/2018 9:08:54 PM  
**Subject:** Re: MACTS

I'm waiting on one more call. Any minute

Sent from my iPhone

On Jan 25, 2018, at 4:07 PM, Dominguez, Alexander <[dominguez.alexander@epa.gov](mailto:dominguez.alexander@epa.gov)> wrote:

It had a 4:00 release time

Sent from my iPhone

On Jan 25, 2018, at 4:04 PM, Lyons, Troy <[lyons.troy@epa.gov](mailto:lyons.troy@epa.gov)> wrote:

When is this going live

Sent from my iPhone

On Jan 25, 2018, at 2:37 PM, Dominguez, Alexander  
<[dominguez.alexander@epa.gov](mailto:dominguez.alexander@epa.gov)> wrote:

**From:** Gunasekara, Mandy  
**Sent:** Thursday, January 25, 2018 2:36 PM  
**To:** Lyons, Troy <[lyons.troy@epa.gov](mailto:lyons.troy@epa.gov)>  
**Cc:** Wehrum, Bill <[Wehrum.Bill@epa.gov](mailto:Wehrum.Bill@epa.gov)>; Harlow, David <[harlow.david@epa.gov](mailto:harlow.david@epa.gov)>; Woods, Clint <[woods.clint@epa.gov](mailto:woods.clint@epa.gov)>; Dominguez, Alexander <[dominguez.alexander@epa.gov](mailto:dominguez.alexander@epa.gov)>; Palich, Christian <[palich.christian@epa.gov](mailto:palich.christian@epa.gov)>; Ringel, Aaron <[ringel.aaron@epa.gov](mailto:ringel.aaron@epa.gov)>; Shimmin, Kaitlyn <[shimmin.kaitlyn@epa.gov](mailto:shimmin.kaitlyn@epa.gov)>  
**Subject:** Re: MACTS

Yes- we are rescinding the once in always in memo. Alex, can you send Troy the latest draft of the press release?

Sent from my iPhone

On Jan 25, 2018, at 2:32 PM, Lyons, Troy <[lyons.troy@epa.gov](mailto:lyons.troy@epa.gov)> wrote:

Getting inquiries from the hill about a MACTs accouchement today. Is anything happening in this space?

---

**Troy M. Lyons**

Associate Administrator

Office of Congressional & Intergovernmental Relations

U.S. Environmental Protection Agency

202-309-2490 (cell)

<Draft PR Once In\_mmg edits 2018 01 25.docx>

**To:** Lyons, Troy[lyons.troy@epa.gov]  
**Cc:** Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]; Wehrum, Bill[Wehrum.Bill@epa.gov]; Harlow, David[harlow.david@epa.gov]; Woods, Clint[woods.clint@epa.gov]; Palich, Christian[palich.christian@epa.gov]; Ringel, Aaron[ringel.aaron@epa.gov]; Shimmin, Kaitlyn[shimmin.kaitlyn@epa.gov]  
**From:** Dominguez, Alexander  
**Sent:** Thur 1/25/2018 9:07:52 PM  
**Subject:** Re: MACTS

It had a 4:00 release time

Sent from my iPhone

On Jan 25, 2018, at 4:04 PM, Lyons, Troy <lyons.troy@epa.gov> wrote:

When is this going live

Sent from my iPhone

On Jan 25, 2018, at 2:37 PM, Dominguez, Alexander <dominguez.alexander@epa.gov> wrote:

**From:** Gunasekara, Mandy  
**Sent:** Thursday, January 25, 2018 2:36 PM  
**To:** Lyons, Troy <lyons.troy@epa.gov>  
**Cc:** Wehrum, Bill <Wehrum.Bill@epa.gov>; Harlow, David <harlow.david@epa.gov>; Woods, Clint <woods.clint@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>; Palich, Christian <palich.christian@epa.gov>; Ringel, Aaron <ringel.aaron@epa.gov>; Shimmin, Kaitlyn <shimmin.kaitlyn@epa.gov>  
**Subject:** Re: MACTS

Yes- we are rescinding the once in always in memo. Alex, can you send Troy the latest draft of the press release?

Sent from my iPhone

On Jan 25, 2018, at 2:32 PM, Lyons, Troy <lyons.troy@epa.gov> wrote:

Getting inquiries from the hill about a MACTs accouchement today. Is anything happening in this space?

---

**Troy M. Lyons**

Associate Administrator

Office of Congressional & Intergovernmental Relations

U.S. Environmental Protection Agency

202-309-2490 (cell)

<Draft PR Once In\_mmg edits 2018 01 25.docx>

**To:** Harlow, David[harlow.david@epa.gov]  
**From:** Schwab, Justin  
**Sent:** Thur 1/25/2018 8:41:11 PM  
**Subject:** Re: OIAI memo

David,

Glad we could be helpful. And I do very much look forward to RTP when we can make it work.

Sent from my iPhone

> On Jan 25, 2018, at 3:11 PM, Harlow, David <harlow.david@epa.gov> wrote:

>

> Justin,

>

> Wanted to close the loop here. Bill, Mandy, and I appreciated your input on the OIAI memo. We ended up incorporating pretty much all of them, which we think really strengthened the product. So, thank you.

>

> By the way, Anna Wood was disappointed that you aren't able to come down on the 1st, but was enthusiastic about your making the trip at another time.

>

> Sent from my iPhone

**To:** Bowman, Liz[Bowman.Liz@epa.gov]; Harlow, David[harlow.david@epa.gov]  
**Cc:** Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]  
**From:** Lewis, Josh  
**Sent:** Thur 1/25/2018 8:26:11 PM  
**Subject:** RE: Memo

[OIAI.Reclassification of Major Sources as Area Sources Under Section 112....docx](#)

Here's the final version that I just got from OAQPS. David - going to print you off a version for you to spot check.

Isabel can answer the Q about the web

-----Original Message-----

From: Bowman, Liz  
Sent: Thursday, January 25, 2018 3:25 PM  
To: Harlow, David <harlow.david@epa.gov>; Lewis, Josh <Lewis.Josh@epa.gov>  
Cc: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>  
Subject: RE: Memo

Will the memo be posted on the website, where the release links to it?

-----Original Message-----

From: Harlow, David  
Sent: Thursday, January 25, 2018 3:20 PM  
To: Lewis, Josh <Lewis.Josh@epa.gov>  
Cc: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Bowman, Liz <Bowman.Liz@epa.gov>  
Subject: Memo

Josh,

When you/we get the final, to-be-signed version, please do be sure to forward a copy to Liz for comms purposes.

Thank you.

Sent from my iPhone



**To:** Bowman, Liz[Bowman.Liz@epa.gov]; Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]  
**Cc:** Harlow, David[harlow.david@epa.gov]  
**From:** DeLuca, Isabel  
**Sent:** Thur 1/25/2018 8:18:26 PM  
**Subject:** RE: OIAI Press Release  
[OI-AI press release 1.25.18.docx](#)

Liz,

John and I had caught a few typos too. They are fixed in the version I sent you a few minutes ago, but just to make sure we all have the latest, here's a clean version (attached).

**From:** Bowman, Liz  
**Sent:** Thursday, January 25, 2018 3:15 PM  
**To:** Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; DeLuca, Isabel <DeLuca.Isabel@epa.gov>  
**Cc:** Harlow, David <harlow.david@epa.gov>  
**Subject:** RE: OIAI Press Release

Great, I made this and the release is ready for us to send as soon as we get the final memo...then I just need some time to tee it up into the system

**From:** Gunasekara, Mandy  
**Sent:** Thursday, January 25, 2018 3:11 PM  
**To:** DeLuca, Isabel <[DeLuca.Isabel@epa.gov](mailto:DeLuca.Isabel@epa.gov)>  
**Cc:** Bowman, Liz <[Bowman.Liz@epa.gov](mailto:Bowman.Liz@epa.gov)>; Harlow, David <[harlow.david@epa.gov](mailto:harlow.david@epa.gov)>  
**Subject:** Re: OIAI Press Release

I'm fine with that change

Sent from my iPhone

On Jan 25, 2018, at 3:09 PM, DeLuca, Isabel <[DeLuca.Isabel@epa.gov](mailto:DeLuca.Isabel@epa.gov)> wrote:

Hi Mandy,

OAQPS asked for one small change in press release, see excerpt below. As soon as Josh gets a cleaned up version of the final memo from OAQPS, he'll run it in to Bill for his signature and we'll scan it and post. I'll let Liz know as soon as it's posted so we can time the release to that.

---

## Ex. 5 - Deliberative Process

**From:** Gunasekara, Mandy

**Sent:** Thursday, January 25, 2018 2:12 PM

**To:** Bowman, Liz <[Bowman.Liz@epa.gov](mailto:Bowman.Liz@epa.gov)>; DeLuca, Isabel <[DeLuca.Isabel@epa.gov](mailto:DeLuca.Isabel@epa.gov)>

**Cc:** Harlow, David <[harlow.david@epa.gov](mailto:harlow.david@epa.gov)>

**Subject:** OIAI Press Release

Hi Liz and Isabel,

Below are my edits to the original press release. I added in policy relevant arguments and changed the tone/direction a bit. Bill reviewed and concurs. Please let me know your thoughts. Also, Isabel, do we have a roll-out plan?

Should we adjust our "roll-out" to 3:30?

**Mandy M. Gunasekara**

Principal Deputy Assistant Administrator

Office of Air and Radiation

US Environmental Protection Agency

**To:** Harlow, David[harlow.david@epa.gov]  
**From:** Lamason, Bill  
**Sent:** Thur 1/25/2018 7:55:15 PM  
**Subject:** RE: OIAI.Reclassification of Major Sources as Area Sources Under Section 112 Draft\_01 25 2018-Final OGC Comments.1.25.18\_PSG.docx

Understood. Thanks! B

**From:** Harlow, David  
**Sent:** Thursday, January 25, 2018 2:52 PM  
**To:** Lamason, Bill <Lamason.Bill@epa.gov>; Culligan, Kevin <Culligan.Kevin@epa.gov>  
**Cc:** Dalcher, Debra <dalcher.debra@epa.gov>; Lewis, Josh <Lewis.Josh@epa.gov>; Koerber, Mike <Koerber.Mike@epa.gov>  
**Subject:** RE: OIAI.Reclassification of Major Sources as Area Sources Under Section 112 Draft\_01 25 2018-Final OGC Comments.1.25.18\_PSG.docx

Great, thank you.

Also, just a reminder about something I believe I may have mentioned, if only in passing, during our conference call, which is that communications made to the public about the issuance of the memorandum is being handled out of HQ in accordance with a comms plan developed by OAR in conjunction with the press/public relations people here. So, until that plan has been rolled out, which should/will take place later this afternoon, all “internal” communications (e.g., from OAQPS to the Regions) about the memorandum should be placed on hold so that the planned roll-out doesn’t get “stepped on,” as it were.

**David S. Harlow**  
**Senior Counsel**

**Immediate Office of the Assistant Administrator**  
**Office of Air and Radiation, USEPA**  
**WJC-N Room 5409K**

**1200 Pennsylvania Avenue NW**

**Washington, DC 20460**  
**202-564-1233**

[Harlow.David@epa.gov](mailto:Harlow.David@epa.gov)

**From:** Lamason, Bill  
**Sent:** Thursday, January 25, 2018 2:30 PM  
**To:** Harlow, David <[harlow.david@epa.gov](mailto:harlow.david@epa.gov)>; Culligan, Kevin <[Culligan.Kevin@epa.gov](mailto:Culligan.Kevin@epa.gov)>  
**Cc:** Dalcher, Debra <[dalcher.debra@epa.gov](mailto:dalcher.debra@epa.gov)>; Lewis, Josh <[Lewis.Josh@epa.gov](mailto:Lewis.Josh@epa.gov)>; Koerber, Mike <[Koerber.Mike@epa.gov](mailto:Koerber.Mike@epa.gov)>  
**Subject:** RE: OIAI.Reclassification of Major Sources as Area Sources Under Section 112  
Draft\_01 25 2018-Final OGC Comments.1.25.18\_PSG.docx

David,

Thanks! Great news! I'll pass along Josh's suggestion to the folks handling the cleanup and are almost done.

We were planning to send the memo to the OAQPS-DC office via Mary Henigin and she can help Josh however needed. We will hold the FR in RTP for Peter's signature after your clearance and Bill signs the memo. I'm copying Mike Koerber who coordinates with Mary on these actions for us and determine how best to move the memo fastest.

Thanks again!

Bill L.

**From:** Harlow, David  
**Sent:** Thursday, January 25, 2018 2:19 PM

**To:** Lamason, Bill <[Lamason.Bill@epa.gov](mailto:Lamason.Bill@epa.gov)>; Culligan, Kevin <[Culligan.Kevin@epa.gov](mailto:Culligan.Kevin@epa.gov)>  
**Cc:** Dalcher, Debra <[dalcher.debra@epa.gov](mailto:dalcher.debra@epa.gov)>; Lewis, Josh <[Lewis.Josh@epa.gov](mailto:Lewis.Josh@epa.gov)>  
**Subject:** RE: OIAI.Reclassification of Major Sources as Area Sources Under Section 112  
Draft\_01 25 2018-Final OGC Comments.1.25.18\_PSG.docx

Bill Wehrum has approved all the revisions/edits that we've been discussing. So please do finalize the memorandum for Bill's signature.

I'm not sure what is the best way to proceed in terms of getting the final version physically up here, but the simplest approach would seem to be that you send the final, to-be-signed version as an attachment in an email to Josh. I'll leave it up to you two to "discuss among yourselves," as it were.

Meanwhile, I'll review the *Federal Register* notice and then get back to you with, presumably, approval to finalize as well.

Thank you.

**David S. Harlow**  
**Senior Counsel**

**Immediate Office of the Assistant Administrator**  
**Office of Air and Radiation, USEPA**  
**WJC-N Room 5409K**

**1200 Pennsylvania Avenue NW**  
**Washington, DC 20460**  
**202-564-1233**

[Harlow.David@epa.gov](mailto:Harlow.David@epa.gov)

**To:** Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]; Bowman, Liz[Bowman.Liz@epa.gov]  
**Cc:** Harlow, David[harlow.david@epa.gov]  
**From:** DeLuca, Isabel  
**Sent:** Thur 1/25/2018 7:29:18 PM  
**Subject:** RE: OIAI Press Release  
[Reclassification of Major Sources Comms Plan 2.pm.docx](#)

Thanks, Mandy! I've accepted your edits and dropped them into a larger comms plan OAQPS provided (includes Q&As).

We will need a copy of the final memo for posting, with the goal to post by 3:15 so the link is live for a 3:30 press release.

**From:** Gunasekara, Mandy  
**Sent:** Thursday, January 25, 2018 2:12 PM  
**To:** Bowman, Liz <Bowman.Liz@epa.gov>; DeLuca, Isabel <DeLuca.Isabel@epa.gov>  
**Cc:** Harlow, David <harlow.david@epa.gov>  
**Subject:** OIAI Press Release

Hi Liz and Isabel,

Below are my edits to the original press release. I added in policy relevant arguments and changed the tone/direction a bit. Bill reviewed and concurs. Please let me know your thoughts. Also, Isabel, do we have a roll-out plan?

Should we adjust our "roll-out" to 3:30?

**Mandy M. Gunasekara**

Principal Deputy Assistant Administrator

Office of Air and Radiation

US Environmental Protection Agency





**To:** Harlow, David[harlow.david@epa.gov]  
**From:** Lamason, Bill  
**Sent:** Thur 1/25/2018 6:46:10 PM  
**Subject:** FW: FRN Notice of Memorandum Availability Draft 01 25 18 JE DD.docx  
FRN Notice of Memorandum Availability Draft 01 25 18 JE DD.docx

David, This is the FR notice with harmonized changes. Bill

**From:** Dalcher, Debra  
**Sent:** Thursday, January 25, 2018 1:45 PM  
**To:** Lamason, Bill <Lamason.Bill@epa.gov>  
**Cc:** Dalcher, Debra <dalcher.debra@epa.gov>  
**Subject:** FRN Notice of Memorandum Availability Draft 01 25 18 JE DD.docx

**To:** Harlow, David[harlow.david@epa.gov]  
**From:** Lamason, Bill  
**Sent:** Thur 1/25/2018 3:53:23 PM  
**Subject:** OIAI.Memo. Reclassification of Major Sources as Area Sources Under Section 112\_2018\_01\_24\_Draft\_Justin OGC 1.25.18\_BLaddedFE.docx  
OIAI.Memo. Reclassification of Major Sources as Area Sources Under Section 112\_2018\_01\_24\_Draft\_Justin OGC 1.25.18\_BLaddedFE.docx

Per my previous email. Call me at Ex. 6 - Personal Privacy if you have questions. Scott is headed to a meeting with BW on the woodstove NSPS so you may see him there to ask questions. B

**To:** Harlow, David[harlow.david@epa.gov]  
**Cc:** Wehrum, Bill[Wehrum.Bill@epa.gov]  
**From:** Tsirigotis, Peter  
**Sent:** Tue 12/19/2017 2:41:31 PM  
**Subject:** Re: Revised draft of OIAI guidance memorandum

Thank you David! After reviewing we may have a question or two for you.

On Dec 19, 2017, at 9:10 AM, Harlow, David <[harlow.david@epa.gov](mailto:harlow.david@epa.gov)> wrote:

Peter,

As Bill mentioned yesterday, attached is the OIAI memo, as we revised it up here.

It was good seeing everybody in OAQPS yesterday. And please accept my congratulations again on your well-deserved elevation to Director.

**David S. Harlow**  
**Senior Counsel**

**Immediate Office of the Assistant Administrator**  
**Office of Air and Radiation, USEPA**  
**WJC-N Room 5409K**

**1200 Pennsylvania Avenue NW**  
**Washington, DC 20460**  
**202-564-1233**

[Harlow.David@epa.gov](mailto:Harlow.David@epa.gov)

<dshRevisedOIAImemorandum.docx>

**To:** Harlow, David[harlow.david@epa.gov]  
**From:** Wehrum, Bill  
**Sent:** Sat 12/16/2017 4:33:54 AM  
**Subject:** Re: Initial draft of OIAI memorandum

Thanks David.

---

Bill Wehrum  
Assistant Administrator  
Office of Air and Radiation  
U.S. Environmental Protection Agency  
(202) 564-7404

On Dec 15, 2017, at 7:28 PM, Harlow, David <[harlow.david@epa.gov](mailto:harlow.david@epa.gov)> wrote:

Bill,

A first draft of the OIAI memorandum is attached. This is obviously quite rough in places, but I wanted you to have something to review, at least to see where I was going, in advance of Monday.

Some points:

**Ex. 5 - Deliberative Process**

**Ex. 5 - Deliberative Process**

# **Ex. 5 - Deliberative Process**

See you on Monday.

**David S. Harlow**  
**Senior Counsel**

**Immediate Office of the Assistant Administrator**  
**Office of Air and Radiation, USEPA**  
**WJC-N Room 5409K**

**1200 Pennsylvania Avenue NW**  
**Washington, DC 20460**  
**202-564-1233**

[Harlow.David@epa.gov](mailto:Harlow.David@epa.gov)

<dshRevisedOIAImemorandum.docx>

**From:** Atkinson, Emily

**Location:** WJC-N 5400 + Video with OAQPS + Ex. 6 - Personal Privacy Participant Code:

Ex. 6 - Personal Privacy

**Importance:** Normal

**Subject:** Once-in, Always-in Policy Revision

**Start Date/Time:** Mon 12/18/2017 7:00:00 PM

**End Date/Time:** Mon 12/18/2017 7:45:00 PM

Wehrum Meeting Request - Once-in Always-in Policy Revision.docx

**To:** Wehrum, Bill; Mandy Gunasekara ([Gunasekara.Mandy@epa.gov](mailto:Gunasekara.Mandy@epa.gov)); Harlow, David; Lewis, Josh; Page, Steve; Koerber, Mike; Harnett, Bill; Tsirigotis, Peter; Lamason, Bill; Wood, Anna; Kornylak, Vera S.; Rodman, Sonja; Jordan, Scott; Vetter, Rick; Dalcher, Debra; Woods, Clint  
**Cc:** Alston, Lala; Johnson, Tanya; McKinney, Voronina; Eck, Janet

**From:** Loving, Shanita

**Location:** WJC-N 5400 + Video with OAQPS + Ex. 6 - Personal Privacy Participant Code:

Ex. 6 - Personal Privacy

**Importance:** Normal

**Subject:** Once-in, Always-in Policy Revision

**Start Date/Time:** Mon 12/18/2017 7:00:00 PM

**End Date/Time:** Mon 12/18/2017 8:00:00 PM

Wehrum Meeting Request - Once-in Always-in Policy Revision.docx

**To:** Wehrum, Bill; Mandy Gunasekara ([Gunasekara.Mandy@epa.gov](mailto:Gunasekara.Mandy@epa.gov)); Harlow, David; Lewis, Josh; Page, Steve; Koerber, Mike; Harnett, Bill; Tsirigotis, Peter; Lamason, Bill; Wood, Anna; Kornylak, Vera S.; Rodman, Sonja; Jordan, Scott; Vetter, Rick; Dalcher, Debra; Woods, Clint  
**Cc:** Alston, Lala; Johnson, Tanya; McKinney, Voronina; Eck, Janet

**To:** Harlow, David[harlow.david@epa.gov]  
**From:** Wehrum, Bill  
**Sent:** Mon 12/11/2017 5:26:53 PM  
**Subject:** Fwd: Once-in-always-in draft memo  
[OIAI Revision Memo 12.8.17.Wehrum Draft no signatory.docx](#)  
[ATT00001.htm](#)

---

Bill Wehrum  
Assistant Administrator  
Office of Air and Radiation  
U.S. Environmental Protection Agency  
(202) 564-7404

Begin forwarded message:

**From:** "Tsirigotis, Peter" <[Tsirigotis.Peter@epa.gov](mailto:Tsirigotis.Peter@epa.gov)>  
**Date:** December 8, 2017 at 12:35:30 PM EST  
**To:** "Wehrum, Bill" <[Wehrum.Bill@epa.gov](mailto:Wehrum.Bill@epa.gov)>  
**Subject:** Once-in-always-in draft memo

Hi Bill attached is our latest draft. We thought we would get started even though decisions haven't been made (we now have a briefing on your calendar).

PS. It would be great to chat **Ex. 5 - Deliberative Process**



**From:** Loving, Shanita

**Location:** WJC-N 5400 + Video with OAQPS + Ex. 6 - Personal Privacy; Participant Code:

Ex. 6 - Personal Privacy

**Importance:** Normal

**Subject:** Once-in, Always-in Policy Revision

**Start Date/Time:** Wed 12/20/2017 9:00:00 PM

**End Date/Time:** Wed 12/20/2017 10:00:00 PM

Wehrum Meeting Request - Once-in Always-in Policy Revision.docx

**To:** Wehrum, Bill; Mandy Gunasekara ([Gunasekara.Mandy@epa.gov](mailto:Gunasekara.Mandy@epa.gov)); Harlow, David; Lewis, Josh; Page, Steve; Koerber, Mike; Harnett, Bill; Tsirigotis, Peter; Lamason, Bill; Wood, Anna; Kornylak, Vera S.; Rodman, Sonja; Jordan, Scott; Vetter, Rick; Dalcher, Debra

**Cc:** Alston, Lala; Johnson, Tanya; McKinney, Voronina; Eck, Janet

**To:** Woods, Clint[woods.Clint@epa.gov]; Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]  
**From:** Harlow, David  
**Sent:** Thur 1/25/2018 2:38:03 PM  
**Subject:** RE: OIAI Rollout

Good point. Thank you..

## Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

**David S. Harlow**  
**Senior Counsel**

**Immediate Office of the Assistant Administrator**  
**Office of Air and Radiation, USEPA**  
**WJC-N Room 5409K**

**1200 Pennsylvania Avenue NW**  
**Washington, DC 20460**  
**202-564-1233**

[Harlow.David@epa.gov](mailto:Harlow.David@epa.gov)

**From:** Woods, Clint  
**Sent:** Thursday, January 25, 2018 9:23 AM  
**To:** Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Harlow, David  
<harlow.david@epa.gov>  
**Subject:** OIAI Rollout

Should be

Ex. 5 - Deliberative Process

## Ex. 5 - Deliberative Process

**To:** Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]  
**From:** Harlow, David  
**Sent:** Thur 1/25/2018 1:33:51 AM  
**Subject:** Re: Revised Draft OIAI Memo

Good catch. I'll be sure to pick that up in the next version of the "paragraph" even if Aaron doesn't have any changes himself.

Sent from my iPhone

On Jan 24, 2018, at 7:45 PM, Gunasekara, Mandy <Gunasekara.Mandy@epa.gov> wrote:

~~Great work on this and glad we are able to respond so quickly to the WH feedback. I think~~

## **Ex. 5 - Deliberative Process**

Sent from my iPhone

On Jan 24, 2018, at 6:59 PM, Harlow, David <harlow.david@epa.gov> wrote:

Peter,

For your awareness. See what is now the next-to-last paragraph on page 4.

## **Ex. 5 - Deliberative Process**

Thanks for your input this evening. It helped me to focus my thinking on what I wanted to do with this.

**David S. Harlow**  
**Senior Counsel**

**Immediate Office of the Assistant Administrator**  
**Office of Air and Radiation, USEPA**  
**WJC-N Room 5409K**

**1200 Pennsylvania Avenue NW**  
**Washington, DC 20460**  
**202-564-1233**

[Harlow.David@epa.gov](mailto:Harlow.David@epa.gov)

**From:** Wehrum, Bill  
**Sent:** Wednesday, January 24, 2018 6:50 PM  
**To:** Szabo, Aaron L. EOP/CEQ <[Aaron.L.Szabo@ceq.eop.gov](mailto:Aaron.L.Szabo@ceq.eop.gov)>  
**Cc:** Gunasekara, Mandy <[Gunasekara.Mandy@epa.gov](mailto:Gunasekara.Mandy@epa.gov)>; Harlow, David <[harlow.david@epa.gov](mailto:harlow.david@epa.gov)>  
**Subject:** Revised Draft OIAI Memo

Aaron – Please see the attached revised version. Please let me know if you have any further thoughts. Thanks for your input.

<Reclassification of Major Sources as Area Sources Under Section 112\_.pdf>

**To:** Wehrum, Bill[Wehrum.Bill@epa.gov]; Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]  
**From:** Harlow, David  
**Sent:** Tue 1/30/2018 1:56:36 PM  
**Subject:** RE: Section112Overview1.26.2017 final.docx  
[dshSection112Overview1.26.2017 final.docx](#)

Mandy,

Per Bill's recommendation to  
**Ex. 5 - Deliberative Process**

## **Ex. 5 - Deliberative Process**

Take these suggestions for whatever you think they may be worth.

David S. Harlow  
Senior Counsel  
Immediate Office of the Assistant Administrator  
Office of Air and Radiation, USEPA  
WJC-N Room 5409K  
1200 Pennsylvania Avenue NW  
Washington, DC 20460  
202-564-1233  
[Harlow.David@epa.gov](mailto:Harlow.David@epa.gov)

-----Original Message-----

**From:** Wehrum, Bill  
**Sent:** Tuesday, January 30, 2018 8:14 AM  
**To:** Gunasekara, Mandy <[Gunasekara.Mandy@epa.gov](mailto:Gunasekara.Mandy@epa.gov)>; Harlow, David <[harlow.david@epa.gov](mailto:harlow.david@epa.gov)>  
**Subject:** RE: Section112Overview1.26.2017 final.docx

On a quick review, this looks good. I suggest

**Ex. 5 - Deliberative Process**

## **Ex. 5 - Deliberative Process**

Bill Wehrum  
Assistant Administrator  
Office of Air and Radiation  
U.S. Environmental Protection Agency  
(202) 564-7404

-----Original Message-----

**From:** Gunasekara, Mandy  
**Sent:** Tuesday, January 30, 2018 8:09 AM  
**To:** Harlow, David <[harlow.david@epa.gov](mailto:harlow.david@epa.gov)>; Wehrum, Bill <[Wehrum.Bill@epa.gov](mailto:Wehrum.Bill@epa.gov)>  
**Subject:** Section112Overview1.26.2017 final.docx

I think this is good for purposes of the TSCA considerations. Before I send to Nancy can you take a quick look?

**To:** Wehrum, Bill[Wehrum.Bill@epa.gov]  
**From:** Harlow, David  
**Sent:** Wed 1/24/2018 11:48:48 PM  
**Subject:** Draft OIAI memo as revised  
Reclassification of Major Sources as Area Sources Under Section 112 .pdf

Here it is, with the new paragraph included on page 4.

**David S. Harlow**  
**Senior Counsel**

**Immediate Office of the Assistant Administrator**  
**Office of Air and Radiation, USEPA**  
**WJC-N Room 5409K**

**1200 Pennsylvania Avenue NW**  
**Washington, DC 20460**  
**202-564-1233**

[Harlow.David@epa.gov](mailto:Harlow.David@epa.gov)

**To:** Wehrum, Bill[Wehrum.Bill@epa.gov]; Gunasekara, Mandy[Gunasekara.Mandy@epa.gov];  
Tsirigotis, Peter[Tsirigotis.Peter@epa.gov]  
**From:** Harlow, David  
**Sent:** Wed 1/24/2018 11:24:50 PM  
**Subject:** RE: OIAI Memo

To follow up here, yes, I am working on it now. Should have something shortly.

Also, just got off the phone with Peter, who'd called on a different matter related to production of the memo, and I looped him in on what we're doing with respect to adding the paragraph.

## Ex. 5 - Deliberative Process

**David S. Harlow**  
**Senior Counsel**

**Immediate Office of the Assistant Administrator**  
**Office of Air and Radiation, USEPA**  
**WJC-N Room 5409K**

**1200 Pennsylvania Avenue NW**  
**Washington, DC 20460**  
**202-564-1233**

[Harlow.David@epa.gov](mailto:Harlow.David@epa.gov)

**From:** Wehrum, Bill  
**Sent:** Wednesday, January 24, 2018 6:21 PM  
**To:** Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>

**Cc:** Harlow, David <harlow.david@epa.gov>

**Subject:** OIAI Memo

I got feedback from the interagency review. They suggested

**Ex. 5 - Deliberative Process**

## **Ex. 5 - Deliberative Process**



**To:** Tsirigotis, Peter[Tsirigotis.Peter@epa.gov]; Woods, Clint[woods.Clint@epa.gov]  
**From:** Harlow, David  
**Sent:** Tue 1/9/2018 7:07:57 PM  
**Subject:** FW: Letter to Administrator Pruitt Requesting Withdrawal of Once-In-Always-In Policy  
[NAM Testimony of Ross Eisenberg 11.15.17.pdf](#)  
[Barrasso Eisenberg QFR Responses 11.15.2017.pdf](#)  
[ACA Letter to EPW final.pdf](#)  
[20180109 Letter from Barrasso and Capito on Once-In-Always-In.pdf](#)

**David S. Harlow**  
**Senior Counsel**

**Immediate Office of the Assistant Administrator**  
**Office of Air and Radiation, USEPA**  
**WJC-N Room 5409K**

**1200 Pennsylvania Avenue NW**  
**Washington, DC 20460**  
**202-564-1233**

[Harlow.David@epa.gov](mailto:Harlow.David@epa.gov)

**From:** Palich, Christian  
**Sent:** Tuesday, January 9, 2018 12:09 PM  
**To:** Wehrum, Bill <Wehrum.Bill@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Harlow, David <harlow.david@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>  
**Cc:** Lyons, Troy <lyons.troy@epa.gov>; Frye, Tony (Robert) <frye.robert@epa.gov>  
**Subject:** FW: Letter to Administrator Pruitt Requesting Withdrawal of Once-In-Always-In Policy

Hi All,

FYI. We just received this letter from Chairman Barrasso and the EPW committee.

Bes Regards,

Christian R. Palich

*Deputy Associate Administrator*

*Office of Congressional & Intergovernmental Affairs*

*U.S Environmental Protection Agency*

*O: 202.564.4944*

*C: 202.306.4656*

*E: [Palich.Christian@epa.gov](mailto:Palich.Christian@epa.gov)*

**From:** Horner, Elizabeth (EPW) [[mailto:Elizabeth\\_Horner@epw.senate.gov](mailto:Elizabeth_Horner@epw.senate.gov)]

**Sent:** Tuesday, January 9, 2018 12:06 PM

**To:** Lyons, Troy <[lyons.troy@epa.gov](mailto:lyons.troy@epa.gov)>; Palich, Christian <[palich.christian@epa.gov](mailto:palich.christian@epa.gov)>

**Cc:** Cone, Travis (Capito) <[Travis\\_Cone@capito.senate.gov](mailto:Travis_Cone@capito.senate.gov)>; Russell, Richard (EPW) <[Richard\\_Russell@epw.senate.gov](mailto:Richard_Russell@epw.senate.gov)>

**Subject:** Letter to Administrator Pruitt Requesting Withdrawal of Once-In-Always-In Policy

Christian and Troy,

Attached is an electronic copy of a letter from EPW Chairman Barrasso and EPW Subcommittee on Clean Air and Nuclear Safety Chairman Capito to Administrator Pruitt requesting that he withdraw the so-called "once-in-always-in" policy. Enclosures to the letter are also attached. We are sending a hard copy by mail as well.

We would appreciate if you could please share with the Administrator and any other appropriate staff.

I would be happy to answer any questions about the letter or provide you with more information.

Best,

Elizabeth

Elizabeth L. Horner

Majority Counsel

Senate Committee on Environment and Public Works

[Elizabeth\\_Horner@epw.senate.gov](mailto:Elizabeth_Horner@epw.senate.gov)

(202) 224-7841

**To:** Wehrum, Bill[Wehrum.Bill@epa.gov]; Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]; Dominguez, Alexander[dominguez.alexander@epa.gov]  
**From:** Harlow, David  
**Sent:** Wed 1/24/2018 4:28:00 PM  
**Subject:** Fwd: FRN Notice of Memorandum Availability 1\_23\_18\_JE DD.docx  
[FRN Notice of Memorandum Availability 1\\_23\\_18\\_JE DD.docx](#)  
[ATT00001.htm](#)

I was pleased to see that OAQPS had already tee'd this up.

Sent from my iPhone

Begin forwarded message:

**From:** "Dalcher, Debra" <[dalcher.debra@epa.gov](mailto:dalcher.debra@epa.gov)>  
**Date:** January 24, 2018 at 10:08:13 AM EST  
**To:** "Harlow, David" <[harlow.david@epa.gov](mailto:harlow.david@epa.gov)>, "Jordan, Scott" <[Jordan.Scott@epa.gov](mailto:Jordan.Scott@epa.gov)>, "Culligan, Kevin" <[Culligan.Kevin@epa.gov](mailto:Culligan.Kevin@epa.gov)>, "Lamason, Bill" <[Lamason.Bill@epa.gov](mailto:Lamason.Bill@epa.gov)>  
**Cc:** "Dalcher, Debra" <[dalcher.debra@epa.gov](mailto:dalcher.debra@epa.gov)>  
**Subject:** FRN Notice of Memorandum Availability 1\_23\_18\_JE DD.docx

David,

This notice will need to be updated to reflect any changes you/Bill/others make to the memo.

We will need to know who is signing both the memo and the notice to prepare the blue folder.

Thank you, Debra

**To:** Wehrum, Bill[Wehrum.Bill@epa.gov]; Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]; Dominguez, Alexander[dominguez.alexander@epa.gov]  
**From:** Harlow, David  
**Sent:** Wed 1/24/2018 4:25:59 PM  
**Subject:** Fwd: Revised OI/AI memorandum  
[dshReclassification of Major Sources as Area Sources Under Section 112 DHarlow Draft.docx ATT00001.htm](#)

FYI, by way of a progress report. There are some "process" traps that OAQPS need to run, and they will now be running those, but we're close to closure here.

## Ex. 5 - Deliberative Process

Sent from my iPhone

Begin forwarded message:

**From:** "Harlow, David" <[harlow.david@epa.gov](mailto:harlow.david@epa.gov)>  
**Date:** January 24, 2018 at 11:02:51 AM EST  
**To:** "Lamason, Bill" <[Lamason.Bill@epa.gov](mailto:Lamason.Bill@epa.gov)>, "Jordan, Scott" <[Jordan.Scott@epa.gov](mailto:Jordan.Scott@epa.gov)>, "Culligan, Kevin" <[Culligan.Kevin@epa.gov](mailto:Culligan.Kevin@epa.gov)>, "Dalcher, Debra" <[dalcher.debra@epa.gov](mailto:dalcher.debra@epa.gov)>, "Rodman, Sonja" <[Rodman.Sonja@epa.gov](mailto:Rodman.Sonja@epa.gov)>, "Lassiter, Penny" <[Lassiter.Penny@epa.gov](mailto:Lassiter.Penny@epa.gov)>  
**Subject:** Revised OI/AI memorandum

All,

Attached is a new draft of the memorandum, revised to reflect what

## Ex. 5 - Deliberative Process

# **Ex. 5 - Deliberative Process**

Thank you.

**David S. Harlow**  
**Senior Counsel**

**Immediate Office of the Assistant Administrator**  
**Office of Air and Radiation, USEPA**  
**WJC-N Room 5409K**

**1200 Pennsylvania Avenue NW**  
**Washington, DC 20460**  
**202-564-1233**

[Harlow.David@epa.gov](mailto:Harlow.David@epa.gov)

**To:** Wehrum, Bill[Wehrum.Bill@epa.gov]  
**From:** Harlow, David  
**Sent:** Wed 1/24/2018 1:41:09 PM  
**Subject:** FW:

FYI. Since Clint looped me in on this, and I looped him back on where things stand from my perspective, I thought I should continue the "looping," as it were.

Meanwhile, I did see where you'd replied to Samantha just a moment ago.

David S. Harlow  
Senior Counsel  
Immediate Office of the Assistant Administrator  
Office of Air and Radiation, USEPA  
WJC-N Room 5409K  
1200 Pennsylvania Avenue NW  
Washington, DC 20460  
202-564-1233  
Harlow.David@epa.gov

-----Original Message-----

From: Harlow, David  
Sent: Wednesday, January 24, 2018 8:39 AM  
To: Woods, Clint <woods.Clint@epa.gov>  
Subject: RE:

Thank you.

FYI, as luck would have it, I got a near-final draft of the OI/AI memo back from OAQPS yesterday

## Ex. 5 - Deliberative Process

David S. Harlow  
Senior Counsel  
Immediate Office of the Assistant Administrator Office of Air and Radiation, USEPA WJC-N Room 5409K  
1200 Pennsylvania Avenue NW  
Washington, DC 20460  
202-564-1233  
Harlow.David@epa.gov

-----Original Message-----

From: Woods, Clint  
Sent: Wednesday, January 24, 2018 8:27 AM  
To: Harlow, David <harlow.david@epa.gov>  
Subject: FW:

FYI

-----Original Message-----

From: Dravis, Samantha  
Sent: Wednesday, January 24, 2018 8:03 AM  
To: Wehrum, Bill <Wehrum.Bill@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Woods, Clint <woods.clint@epa.gov>  
Subject:

When can we expect the Once in Always In memo as well as CTGs to be finalized? Just want to give SP an update in our planning meeting.

Sent from my iPad



**To:** Schwab, Justin[Schwab.Justin@epa.gov]  
**From:** Harlow, David  
**Sent:** Thur 1/25/2018 8:11:40 PM  
**Subject:** OIAI memo

Justin,

Wanted to close the loop here. Bill, Mandy, and I appreciated your input on the OIAI memo. We ended up incorporating pretty much all of them, which we think really strengthened the product. So, thank you.

By the way, Anna Wood was disappointed that you aren't able to come down on the 1st, but was enthusiastic about your making the trip at another time.

Sent from my iPhone

**To:** Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]; Dominguez, Alexander[dominguez.alexander@epa.gov]  
**From:** Harlow, David  
**Sent:** Thur 1/25/2018 7:53:14 PM  
**Subject:** FW: OIAI.Reclassification of Major Sources as Area Sources Under Section 112 Draft\_01 25 2018-Final OGC Comments.1.25.18\_PSG.docx

Just fyi.

**David S. Harlow**  
**Senior Counsel**

**Immediate Office of the Assistant Administrator**  
**Office of Air and Radiation, USEPA**  
**WJC-N Room 5409K**

**1200 Pennsylvania Avenue NW**  
**Washington, DC 20460**  
**202-564-1233**

[Harlow.David@epa.gov](mailto:Harlow.David@epa.gov)

**From:** Harlow, David  
**Sent:** Thursday, January 25, 2018 2:52 PM  
**To:** Lamason, Bill <Lamason.Bill@epa.gov>; Culligan, Kevin <Culligan.Kevin@epa.gov>  
**Cc:** Dalcher, Debra <dalcher.debra@epa.gov>; Lewis, Josh <Lewis.Josh@epa.gov>; Koerber, Mike <Koerber.Mike@epa.gov>  
**Subject:** RE: OIAI.Reclassification of Major Sources as Area Sources Under Section 112 Draft\_01 25 2018-Final OGC Comments.1.25.18\_PSG.docx

Great, thank you.

## **Ex. 5 - Deliberative Process**

# Ex. 5 - Deliberative Process

**David S. Harlow**  
**Senior Counsel**

**Immediate Office of the Assistant Administrator**  
**Office of Air and Radiation, USEPA**  
**WJC-N Room 5409K**

**1200 Pennsylvania Avenue NW**  
**Washington, DC 20460**  
**202-564-1233**

[Harlow.David@epa.gov](mailto:Harlow.David@epa.gov)

**From:** Lamason, Bill  
**Sent:** Thursday, January 25, 2018 2:30 PM  
**To:** Harlow, David <[harlow.david@epa.gov](mailto:harlow.david@epa.gov)>; Culligan, Kevin <[Culligan.Kevin@epa.gov](mailto:Culligan.Kevin@epa.gov)>  
**Cc:** Dalcher, Debra <[dalcher.debra@epa.gov](mailto:dalcher.debra@epa.gov)>; Lewis, Josh <[Lewis.Josh@epa.gov](mailto:Lewis.Josh@epa.gov)>; Koerber, Mike <[Koerber.Mike@epa.gov](mailto:Koerber.Mike@epa.gov)>  
**Subject:** RE: OIAI.Reclassification of Major Sources as Area Sources Under Section 112  
Draft\_01 25 2018-Final OGC Comments.1.25.18\_PSG.docx

David,

Thanks! Great news! I'll pass along Josh's suggestion to the folks handling the cleanup and are almost done.

We were planning to send the memo to the OAQPS-DC office via Mary Henigin and she can help Josh however needed. We will hold the FR in RTP for Peter's signature after your clearance and Bill signs the memo. I'm copying Mike Koerber

who coordinates with Mary on these actions for us and determine how best to move the memo fastest.

Thanks again!

Bill L.

**From:** Harlow, David  
**Sent:** Thursday, January 25, 2018 2:19 PM  
**To:** Lamason, Bill <[Lamason.Bill@epa.gov](mailto:Lamason.Bill@epa.gov)>; Culligan, Kevin <[Culligan.Kevin@epa.gov](mailto:Culligan.Kevin@epa.gov)>  
**Cc:** Dalcher, Debra <[dalcher.debra@epa.gov](mailto:dalcher.debra@epa.gov)>; Lewis, Josh <[Lewis.Josh@epa.gov](mailto:Lewis.Josh@epa.gov)>  
**Subject:** RE: OIAI.Reclassification of Major Sources as Area Sources Under Section 112  
Draft\_01 25 2018-Final OGC Comments.1.25.18\_PSG.docx

Bill Wehrum has approved all the revisions/edits that we've been discussing. So please do finalize the memorandum for Bill's signature.

I'm not sure what is the best way to proceed in terms of getting the final version physically up here, but the simplest approach would seem to be that you send the final, to-be-signed version as an attachment in an email to Josh. I'll leave it up to you two to "discuss among yourselves," as it were.

Meanwhile, I'll review the *Federal Register* notice and then get back to you with, presumably, approval to finalize as well.

Thank you.

**David S. Harlow**  
**Senior Counsel**

**Immediate Office of the Assistant Administrator**  
**Office of Air and Radiation, USEPA**  
**WJC-N Room 5409K**

**1200 Pennsylvania Avenue NW**  
**Washington, DC 20460**  
**202-564-1233**

[Harlow.David@epa.gov](mailto:Harlow.David@epa.gov)

**To:** Lamason, Bill[Lamason.Bill@epa.gov]  
**From:** Harlow, David  
**Sent:** Thur 1/25/2018 6:45:23 PM  
**Subject:** RE: OIAI.Reclassification of Major Sources as Area Sources Under Section 112 Draft\_01 25 2018-Final OGC Comments.1.25.18\_PSG.docx

Thank you. I'll take a quick look at these.

Meanwhile, Kevin just came by re: the highlighted text, and we've reached an understanding as to that.

My plan, as I believe I mentioned before, is to try to catch Bill Wehrum for a couple/few minutes between his ongoing back-to-back meetings now to verify that I and Mandy have made the right call as to the earlier/more substantive revisions – subsequent to our call, I filled in Mandy as to what we'd discussed, and she concurred – and then (finally!) we should be good to go.

**David S. Harlow**  
**Senior Counsel**

**Immediate Office of the Assistant Administrator**  
**Office of Air and Radiation, USEPA**  
**WJC-N Room 5409K**

**1200 Pennsylvania Avenue NW**  
**Washington, DC 20460**  
**202-564-1233**

[Harlow.David@epa.gov](mailto:Harlow.David@epa.gov)

**From:** Lamason, Bill  
**Sent:** Thursday, January 25, 2018 1:41 PM  
**To:** Harlow, David <harlow.david@epa.gov>; Culligan, Kevin <Culligan.Kevin@epa.gov>

**Cc:** Dalcher, Debra <dalcher.debra@epa.gov>

**Subject:** OIAI.Reclassification of Major Sources as Area Sources Under Section 112 Draft\_01  
25 2018-Final OGC Comments.1.25.18\_PSG.docx

David, These are the final edits. Kevin will discuss the yellow highlighted text with you. If you do not connect, please call me.

We await OAR approval. Thanks! Bill

**To:** Jordan, Scott[Jordan.Scott@epa.gov]  
**Sent:** Tue 1/9/2018 4:43:41 PM  
**Subject:** OIAI Memo - Draft with Partial Comments  
OIAI.RevisedOIAImemorandum\_1\_5\_2018+ SJJ 1.9.18.Noon.docx

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508



**From:** Dalcher, Debra  
**Location:** Debra to Call Scott (we can chat Friday am if that works better just let me know)  
**Importance:** Normal  
**Subject:** OIAI Meetng  
**Start Date/Time:** Thur 1/18/2018 6:00:00 PM  
**End Date/Time:** Thur 1/18/2018 6:30:00 PM

**From:** Jordan, Scott  
**Location:** Scott will call Sonja's Cell at Ex. 6 - Personal Privacy  
**Importance:** Normal  
**Subject:** OIAI - Discuss Notes Document  
**Start Date/Time:** Thur 1/18/2018 2:30:00 PM  
**End Date/Time:** Thur 1/18/2018 3:00:00 PM

**From:** Jordan, Scott  
**Importance:** Normal  
**Subject:** OIAI - Blocked time  
**Start Date/Time:** Thur 1/18/2018 3:00:00 PM  
**End Date/Time:** Thur 1/18/2018 5:00:00 PM

**From:** Jordan, Scott  
**Importance:** Normal  
**Subject:** OIAI - Blocked time to review Memo  
**Start Date/Time:** Fri 1/19/2018 1:00:00 PM  
**End Date/Time:** Fri 1/19/2018 6:00:00 PM

**From:** Jordan, Scott  
**Importance:** Normal  
**Subject:** OIAI - Blocked time to prepare Memo/Rulemaking Plan  
**Start Date/Time:** Wed 1/17/2018 1:00:00 PM  
**End Date/Time:** Wed 1/17/2018 3:30:00 PM

**From:** Jordan, Scott  
**Importance:** Normal  
**Subject:** Prep for OIAI Meeting with OAR  
**Start Date/Time:** Thur 1/18/2018 7:00:00 PM  
**End Date/Time:** Thur 1/18/2018 8:00:00 PM

**From:** Jordan, Scott  
**Location:** Sonja's Office  
**Importance:** Normal  
**Subject:** OIAI - Update (Just Sonja and Scott)  
**Start Date/Time:** Thur 1/11/2018 3:00:00 PM  
**End Date/Time:** Thur 1/11/2018 4:00:00 PM

Feel free to decline this if you don't think we need it.

**From:** Jordan, Scott  
**Importance:** Normal  
**Subject:** OIAI - Blocked Time to review Memo  
**Start Date/Time:** Tue 1/9/2018 2:00:00 PM  
**End Date/Time:** Tue 1/9/2018 6:00:00 PM  
[OIAI.RevisedOIAImemorandum\\_1\\_5\\_2018+ SJJ 1.8.18.docx](#)



**To:** Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]; Wehrum, Bill[Wehrum.Bill@epa.gov]  
**Cc:** Bowman, Liz[Bowman.Liz@epa.gov]  
**From:** Block, Molly  
**Sent:** Fri 1/26/2018 6:07:30 PM  
**Subject:** Once In Always In News Coverage  
[Once In Always In Coverage.docx](#)

Coverage linked below and attached.

### **“Once In Always In” Coverage**

[Wall Street Journal: EPA Withdraws Air Pollution Policy](#)

[The Hill: EPA loosens rules on some ‘major’ air pollution sources](#)

[Politico: EPA drops ‘once in, always in’ policy from key Clean Air Act requirements](#)

[Reuters: U.S. EPA Reverse Policy on ‘Major Sources’ of Pollution](#)

[Inside EPA: EPA Ends ‘Once In, Always In’ Air Policy, Easing Facilities’ MACT Mandates](#)

[Washington Examiner: EPA Weakens Rules on Emissions From Polluters](#)

[BNA: EPA Drops Toxic Pollutant Policy It Called Burden to Business](#)

[Associated Press: EPA ends clean air policy opposed by fossil fuel interests](#)

## **Wall Street Journal**

<https://www.wsj.com/articles/epa-withdraws-air-pollution-policy-1516935178?mod=searchresults&page=1&pos=4>

### **EPA Withdraws Air Pollution Policy**

By Timothy Puko, 1/25/18, 9:52 AM

WASHINGTON—The Trump administration is withdrawing a decades-old air policy aimed at reining in some of the largest sources of hazardous pollutants like mercury and lead.

The Environmental Protection Agency said late Thursday it is getting rid of requirements that it forever keep sites classified as “major sources” of hazardous air pollution once they meet that classification. This “once-in always-in” policy punished industry by keeping factories and other sites under heavy regulation even if they made improvements that would prevent them from being major sources of pollution, according to the EPA and lawmakers who had requested the move.

Environmentalists and congressional critics decried the change, saying it is one of the EPA’s bedrock environmental regulations that keeps polluters from trimming back to just below the major-source classification cutoff to avoid requirements that could further lower their emissions.

President Donald Trump has made a rollback of environmental regulations one of his signature issues, carrying out a main campaign promise by withdrawing or rewriting rules designed to fight climate change, coal-ash pollution and coastal flooding, among many others. It is part of a broad attempt to make oil companies, power plants and manufacturers, among several different industries, more competitive by lowering their costs.

The latest change “will reduce regulatory burden for industries and the states, while continuing to ensure stringent and effective controls on hazardous air pollutants,” Bill Wehrum, assistant administrator of the EPA’s Office of Air and Radiation, said in a statement.

The policy, dating back to 1995, requires facilities that annually emit 10 tons or more of a single air pollutant or 25 tons or more of a group of pollutants to use the maximum achievable technology controls to lower their pollution. Deploying the technology required by that standard can lower pollution by as much as 95%. It applies to nearly 200 pollutants, including arsenic, dioxins, lead and mercury.

Republicans Sen. Shelley Moore Capito of West Virginia and Sen. John Barrasso of Wyoming, both from heavy coal-producing states, sent a letter to the EPA earlier this month asking for the change. They said the inability of plants to escape from being classified as a major source removed an incentive to invest and make further improvements.

Environmentalists argue that the opposite is the case, and they have been successful in blocking

the rule's withdrawal in the past. The EPA tried to withdraw the rule during President George W. Bush's administration, too—when Mr. Wehrum last worked at the EPA in the same office—and Congress blocked the effort. At the time, the Natural Resources Defense Council leaked an EPA internal memo in which regional EPA officials criticized the proposal. They said industrial facilities could “backslide” from having to use the stricter technology controls, which would allow them to increase pollution and still meet the standard.

Thursday's move, “drastically weakens protective limits on air pollutants...that cause cancer, brain damage, infertility, developmental problems and even death,” John Walke, the NRDC's clean air director, said in a statement. “And those harmed most would be nearby communities already suffering a legacy of pollution.”

The change will primarily help steel, paper and chemical makers among other manufacturing sites, said Jeff Holmstead, a partner at law and lobbying firm Bracewell LLP, who led the EPA's Office of Air and Radiation during Mr. Bush's first term. NRDC says hundreds of plants could be affected. The number is unclear, Mr. Holmstead said, and they would all need to go through a recertification process to benefit, he added.

“It certainly does give manufacturing plants more flexibility in terms of how they reduce their pollution,” he added. “It certainly does reduce the regulatory burden.”

## The Hill

<http://thehill.com/policy/energy-environment/370786-epa-loosens-rules-on-some-major-air-pollution-sources>

### **EPA loosens rules on some ‘major’ air pollution sources**

By Timothy Cama, 1/25/18, 5:10 PM

The Environmental Protection Agency (EPA) loosened regulatory compliance standards Thursday for certain sources of air pollution previously considered "major."

William Wehrum, head of the EPA's air office, put out regulatory guidance repealing the "once in, always in" policy, in which facilities like power plants or factories considered "major" sources of hazardous air pollutants were always regulated as such, even if the facilities' owners took measures to reduce pollution.

"This guidance is based on a plain language reading of the statute that is in line with EPA's guidance for other provisions of the Clean Air Act," Wehrum said in a statement. "It will reduce regulatory burden for industries and the states, while continuing to ensure stringent and effective controls on hazardous air pollutants."

The previous standard had been enforced since 1995. "Major" air pollution sources are subject to much stricter rules for what they must do to reduce emissions such as mercury compounds and benzene.

The EPA argued that the "once in, always in" standard disincentivized companies from reducing pollution and targeted it as part of the Trump administration's overarching goal of cutting regulatory burdens.

"Nothing in the structure of the [Clean Air Act] counsels against the plain language reading of the statute to allow major sources to become area sources after an applicable compliance date," Wehrum wrote in his guidance.

The Natural Resources Defense Council slammed the move, saying it will cause the biggest increase in air pollution in United States history.

"This is among the most dangerous actions that the Trump EPA has taken yet against public health," John Walke, the group's clean air director, said in a statement. "This move drastically weakens protective limits on air pollutants like arsenic, lead, mercury and other toxins that cause cancer, brain damage, infertility, developmental problems and even death. And those harmed most would be nearby communities already suffering a legacy of pollution."

# Politico

<https://www.politicopro.com/energy/whiteboard/2018/01/epa-drops-once-in-always-in-policy-from-key-clean-air-act-requirements-480570>

## **EPA drops ‘once in, always in’ policy from key Clean Air Act requirements**

By Alex Guillen, 1/25/18, 6:11 PM

EPA today withdrew a Clinton-era policy that was designed to prevent major emitters like power plants and factories from getting out of tough requirements to limit their toxic air emissions.

In a new memo, EPA air chief Bill Wehrum wrote that the "once in, always in" policy “is contrary to the plain language” of the Clean Air Act. Wehrum revoked a 1995 guidance memo outlining the policy and said EPA would consider new regulations to clarify its interpretation of the law.

Under the now-revoked guidance, any emitter that qualified as a "major" source of hazardous air pollutants would forever be subject to that tougher standard to comply with MACT rules, even if its emissions dropped low enough to be considered an "area" source subject to fewer or no requirements. Wehrum's memo said the law does not specify that such classifications are permanent.

“EPA has now determined that a major source which takes an enforceable limit on its [potential emissions] and takes measures to bring its HAP emissions below the applicable threshold becomes an area source, no matter when the source may choose to take measures to limit its" potential pollution emissions, Wehrum wrote.

Wehrum argued that the policy shift will actually encourage sources that hesitated to install emission reduction projects to move forward. Environmentalists, however, quickly blasted the change on social media.

The Bush administration twice attempted to change the OIAI policy but never succeeded.

WHAT'S NEXT: Wehrum's memo says EPA will "soon publish a Federal Register notice to take comment on adding regulatory text that will reflect EPA's plain language reading of the statute."

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## Reuters

<https://www.reuters.com/article/us-usa-trump-epa/u-s-epa-reverses-policy-on-major-sources-of-pollution-idUSKBN1FF075>

### **U.S. EPA Reverse Policy on ‘Major Sources’ of Pollution**

By Eric Beech, 1/25/18, 9:37 pm

The U.S. Environmental Protection Agency said on Thursday it was withdrawing a provision of the Clean Air Act that requires a major source of pollution like a power plant to always be treated as a major source, even if it makes changes to reduce emissions.

The decision to withdraw the “once-in always-in” policy is part of President Donald Trump’s effort to roll back federal regulations and was sought by utilities, the petroleum industry and others.

Sources of air pollution previously classified as “major sources” may be reclassified as “area” sources when the facility limits its emissions below “major source” thresholds, the EPA said. Area sources are subject to less strict pollution control standards than major sources.

“It will reduce regulatory burden for industries and the states, while continuing to ensure stringent and effective controls on hazardous air pollutants,” Bill Wehrum, assistant administrator of the EPA’s Office of Air and Radiation, said in a statement.

The “once-in always-in” policy, which was established in 1995, has been a disincentive for power plants, factories and other major sources of pollution to pursue technological innovations that would reduce emissions, the agency said.

The Natural Resources Defense Council, an environmental group, said the decision “is among the most dangerous actions that the Trump EPA has taken yet against public health.”

“This move drastically weakens protective limits on air pollutants like arsenic, lead, mercury and other toxins that cause cancer, brain damage, infertility, developmental problems and even death,” John Walke, director of a clean air program for the NRDC, said in a statement.

## Inside EPA

<https://insideepa.com/daily-news/epa-ends-once-always-air-policy-easing-facilities-mact-mandates>

### **EPA Ends ‘Once In, Always In’ Air Policy, Easing Facilities’ MACT Mandates**

By Stuart Parker, 1/25/18

EPA has withdrawn its contested “once in, always in” policy that subjected industrial facilities to strict maximum achievable control technology (MACT) air toxics rules for their lifetime even if they reduced and kept emissions below MACT levels, a major win for GOP senators, the Commerce Department and others who oppose the policy.

In a Jan. 25 “guidance” memo sent to EPA's regional air directors, the agency's air chief William Wehrum rescinds the 1995 policy, clearing the way for plants to reduce their potential to emit (PTE) and escape MACT emissions limits if they keep their emissions below MACT limits. MACT limits apply to “major” sources of hazardous air pollutants (HAPs), defined as those sources emitting in excess of 10 tons per year (tpy) of one HAP or 25 tpy of a combination of HAPs.

“This guidance is based on a plain language reading of the statute that is in line with EPA’s guidance for other provisions of the Clean Air Act,” said Wehrum in a statement. “It will reduce regulatory burden for industries and the states, while continuing to ensure stringent and effective controls on hazardous air pollutants.”

EPA in the statement adds that the policy “has been a longstanding disincentive for sources to implement voluntary pollution abatement and prevention efforts, or to pursue technological innovations that would reduce hazardous air pollution emissions,” saying the move is part of the Trump administration's deregulatory agenda.

Sources that limit their PTE below the major source thresholds will now be considered “area sources” subject to less-stringent air pollution control requirements.

Wehrum in the memo writes, “EPA has now determined that a major source which takes an enforceable limit on its PTE and takes measures to bring its HAP emissions below the applicable threshold becomes an area source, no matter when the source may choose to take measures to limit its PTE.”

He notes, “Congress placed no temporal limitations on the determination of whether a source emits or has” the potential to emit HAPs “in sufficient quantity to qualify as a major source.”

Wehrum in the memo says that “EPA anticipates that it will soon publish a Federal Register notice to take comment on adding regulatory text that will reflect EPA's plain language reading of the statute.”

The notice will give critics of the move an opportunity to comment and potentially lay the foundation for eventual litigation against either the memo or a resulting regulation to implement the decision.

#### Deregulatory Agenda

Industry groups and others responding to earlier Trump administration solicitations for comment on what deregulatory steps would be helpful cited ending the policy as one step that EPA should take.

For example, the Commerce Department in [a regulatory review report last year](#) urged the agency to “review the 'once in, always in' policy to clarify the means by which a facility currently classified as a major source can become an area source,” identifying it as a potential barrier to industry.

Sources told Inside EPA last year that the White House appears to be [supporting states' calls](#) to overhaul smaller “in-the-weeds” EPA rules such as the once in, always in policy, in lieu of calls to undo “big ticket” Obama-era policies.

More recently, Senate Environment & Public Works Committee (EPW) Chairman John Barrasso (R-WY) and EPW clean air panel Chairman Shelley Moore Capito (R-WV) sent [a Jan. 9 letter to EPA Administrator Scott Pruitt](#) urging him to end the policy. They argued that the policy serves to discourage, rather than promote, emissions reductions.

But environmentalists in early reaction are calling the policy withdrawal reckless. The new



policy will “allow hundreds of U.S. industrial facilities to dramatically increase their emissions of the most toxic air pollutants regulated by the Clean Air Act,” the Natural Resources Defense Council (NRDC) said in a Jan. 25 statement.

NRDC Clean Air Director John Walke said, “This is among the most dangerous actions that the Trump EPA has taken yet against public health. Rolling back longstanding protections to allow the greatest increase in hazardous air pollutants in our nation's history is unconscionable.”

Walke promises NRDC “will fight this terrible decision to unleash toxic pollutants with every available tool.” However, because it is a guidance memo rather than a regulation, environmentalists may find the move harder to challenge in court, where it may be more difficult to establish as a “final agency action” subject to judicial review.

## Washington Examiner

<http://www.washingtonexaminer.com/epa-weakens-rules-on-emissions-from-polluters/article/2647110>

### **EPA Weakens Rules on Emissions From Polluters**

By Josh Siegel, 1/25/18, 5:49 pm

The Environmental Protection Agency on Thursday withdrew a policy that imposed strict limits on hazardous air pollutants emitted by factories, plants, or other types of facilities considered “major” polluters.

The longstanding “once-in-always-in” policy, established in 1995, said major polluting facilities failing to meet certain emission thresholds always had to meet those standards from then on, even if the facility made changes to reduce its pollution.

With the new Trump administration policy, sources of hazardous air pollutants previously classified as “major sources” for their high amount of polluting may be reclassified as “area” sources when the facility limits its potential to emit pollution.

“This guidance is based on a plain language reading of the statute that is in line with EPA’s guidance for other provisions of the Clean Air Act,” said Bill Wehrum, assistant administrator of EPA’s Office of Air and Radiation. “It will reduce regulatory burden for industries and the states, while continuing to ensure stringent and effective controls on hazardous air pollutants.”

The EPA said the “once-in-always-in” policy has discouraged facilities from implementing pollution control technology to reduce emissions. Sens. John Barrasso, R-Wyo., chairman of the Senate Environment and Public Works Committee, and Shelley Moore Capito, R-W.Va., had

asked the Trump administration to abandon the policy.

“The EPA’s decision today is consistent with President Trump’s agenda to keep America’s air clean and our economy growing,” Barrasso said. “Withdrawal of this policy means manufacturers, oil and gas operations, and other types of industrial facilities will have greater incentive to reduce emissions. Now these companies can help protect the environment without wasting time and money on unnecessary red tape.”

Environmentalists said the EPA’s change would allow facilities to emit more pollution and vowed to fight the move.

“This is among the most dangerous actions that the Trump EPA has taken yet against public health,” said John Walke, clean air director and a senior attorney for the Natural Resources Defense Council. “Rolling back longstanding protections to allow the greatest increase in hazardous air pollutants in our nation’s history is unconscionable. Those harmed most would be nearby and downwind communities already suffering a legacy of toxic pollution. NRDC will fight this terrible decision to unleash toxic pollutants nationwide with every available tool.”

## BNA

[http://esweb.bna.com/eslw/display/no\\_alpha.adp?mode=si&frag\\_id=127424104&item=408&prod=deln&cat=A](http://esweb.bna.com/eslw/display/no_alpha.adp?mode=si&frag_id=127424104&item=408&prod=deln&cat=A)

### **EPA Drops Toxic Pollutant Policy It Called Burden to Business (Corrected)**

By Sara Merken, 1/26/18

Industrial facilities that reduce their ability to emit toxic air pollutants will be exempted from some requirements to control their emissions in a move the Trump administration said will encourage companies to reduce pollution voluntarily.

The Environmental Protection Agency Jan. 25 issued a memorandum withdrawing the “once-in-always-in” policy under the Clean Air Act, which prevents major sources of toxic air pollutants from removing pollution control devices after emissions fall below a certain threshold. Instead, those facilities can now be reclassified as smaller “area” sources that are subject to less stringent requirements.

“This guidance is based on a plain language reading of the statute that is in line with EPA’s guidance for other provisions of the Clean Air Act,” Bill Wehrum, assistant administrator of

EPA's Office of Air and Radiation, said in a statement. "It will reduce regulatory burden for industries and the states, while continuing to ensure stringent and effective controls on hazardous air pollutants."

John Walke, director of the clean air project at the Natural Resources Defense Council, called the move "unconscionable and immoral."

"This is the most reckless step taken by any EPA administrator in the agency's history," Walke told Bloomberg Environment. His group and many states will vigorously fight the action, he said.

### **Policy Began in 1995**

The policy originated in a 1995 memorandum that clarified when major sources, which release at least 10 tons per year of a single hazardous air pollutant or 25 tons of any combination of toxic pollutants each year, can be reclassified area sources.

Since area sources are not required to install stringent pollution controls known as maximum achievable control technology, or MACT, major sources can avoid MACT requirements by limiting their emissions to become area source before a certain compliance deadline.

The American Forest & Paper Association, which counts the Procter & Gamble Co. and Georgia-Pacific LLC among its members, and the American Wood Council released a joint statement Jan. 25 welcoming the EPA's action. The move also drew praise from Republican senators who called on the EPA to withdraw the policy earlier this year.

"The EPA's decision today is consistent with President Trump's agenda to keep America's air clean and our economy growing," Sen. John Barrasso (R-Wyo.), chairman of the Senate environment committee, said in a statement. "Withdrawal of this policy means manufacturers, oil and gas operations, and other types of industrial facilities will have greater incentive to reduce emissions. Now these companies can help protect the environment without wasting time and money on unnecessary red tape."

Sens. Barrasso and Shelley Moore Capito (R-W.Va.) said the policy “disincentivizes air emissions reductions” in a Jan. 9 [letter](#) to EPA Administrator Scott Pruitt.

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## Associated Press

<https://www.sfgate.com/news/politics/article/EPA-ends-clean-air-policy-opposed-by-fossil-fuel-12526165.php>

### **EPA ends clean air policy opposed by fossil fuel interests**

By Michael Biesecker, 1/25/18

The Trump administration announced Thursday it is doing away with a decades-old air emissions policy opposed by fossil fuel companies, a move that environmental groups say will result in more pollution.

The Environmental Protection Agency said it was withdrawing the "once-in always-in" policy under the Clean Air Act, which dictated how major sources of hazardous air pollutants are regulated. Under the EPA's new interpretation, such "major sources" as coal-fired power plants can be reclassified as "area sources" when their emissions fall below mandated limits, subjecting them to differing standards.

Though formal notice of the reversal has not yet been filed, EPA said the policy it has followed since 1995 relied on an incorrect interpretation of the landmark anti-pollution law.

"This guidance is based on a plain language reading of the statute that is in line with EPA's guidance for other provisions of the Clean Air Act," said Bill Wehrum, assistant administrator of EPA's Office of Air and Radiation. "It will reduce regulatory burden for industries and the states, while continuing to ensure stringent and effective controls on hazardous air pollutants."

Prior to his confirmation by the GOP-dominated Senate in November, Wehrum worked as a lawyer representing fossil fuel and chemical companies. The American Petroleum Institute was among the industry groups that had called for the longstanding policy to be scrapped.

The Clean Air Act defines a "major source" as a one that has the potential to emit 10 tons or more per year of any hazardous air pollutant, or 25 tons per year of any combination of hazardous air pollutants. For more than 20 years, EPA's "once-in always-in" required major sources to remain subject to stricter control standards, even if they took steps to reduce their pollution below the threshold.

Republicans quickly cheered the move by EPA Administrator Scott Pruitt, especially those from states that produce oil, gas and coal.

"The EPA's decision today is consistent with President Trump's agenda to keep America's air clean and our economy growing," said Senate Environment Committee Chairman John Barrasso of Wyoming. "Withdrawal of this policy means manufacturers, oil and gas operations, and other types of industrial facilities will have greater incentive to reduce emissions."

Environmentalists predicted the change would drastically weaken limits on toxic heavy metals emitted from power-plant smokestacks.

"This is among the most dangerous actions that the Trump EPA has taken yet against public health," said John Walke, the director for clean air issues at the Natural Resources Defense Council. "Rolling back longstanding protections to allow the greatest increase in hazardous air pollutants in our nation's history is unconscionable."

John Coequyt, who leads climate policy initiatives for the Sierra Club, said the move will lead directly to dirtier air and more deaths.

"Trump and Pruitt are essentially creating a massive loophole that will result in huge amounts of toxic mercury, arsenic, and lead being poured into the air we breathe, meaning this change is a threat to anyone who breathes and a benefit only to dangerous corporate polluters," Coequyt said.

### **“Once In Always In” Coverage**

Wall Street Journal: EPA Withdraws Air Pollution Policy

The Hill: EPA loosens rules on some ‘major’ air pollution sources

Politico: EPA drops ‘once in, always in’ policy from key Clean Air Act requirements

Reuters: U.S. EPA Reverse Policy on ‘Major Sources’ of Pollution

Inside EPA: EPA Ends ‘Once In, Always In’ Air Policy, Easing Facilities’ MACT Mandates

Washington Examiner: EPA Weakens Rules on Emissions From Polluters

BNA: EPA Drops Toxic Pollutant Policy It Called Burden to Business

Associated Press: EPA ends clean air policy opposed by fossil fuel interests

## Wall Street Journal

<https://www.wsj.com/articles/epa-withdraws-air-pollution-policy-1516935178?mod=searchresults&page=1&pos=4>

### **EPA Withdraws Air Pollution Policy**

By Timothy Puko, 1/25/18, 9:52 AM

WASHINGTON—The Trump administration is withdrawing a decades-old air policy aimed at reining in some of the largest sources of hazardous pollutants like mercury and lead.

The Environmental Protection Agency said late Thursday it is getting rid of requirements that it forever keep sites classified as “major sources” of hazardous air pollution once they meet that classification. This “once-in always-in” policy punished industry by keeping factories and other sites under heavy regulation even if they made improvements that would prevent them from being major sources of pollution, according to the EPA and lawmakers who had requested the move.

Environmentalists and congressional critics decried the change, saying it is one of the EPA’s bedrock environmental regulations that keeps polluters from trimming back to just below the major-source classification cutoff to avoid requirements that could further lower their emissions.

President Donald Trump has made a rollback of environmental regulations one of his signature issues, carrying out a main campaign promise by withdrawing or rewriting rules designed to fight climate change, coal-ash pollution and coastal flooding, among many others. It is part of a broad attempt to make oil companies, power plants and manufacturers, among several different industries, more competitive by lowering their costs.

The latest change “will reduce regulatory burden for industries and the states, while continuing to ensure stringent and effective controls on hazardous air pollutants,” Bill Wehrum, assistant administrator of the EPA’s Office of Air and Radiation, said in a statement.

The policy, dating back to 1995, requires facilities that annually emit 10 tons or more of a single air pollutant or 25 tons or more of a group of pollutants to use the maximum achievable technology controls to lower their pollution. Deploying the technology required by that standard can lower pollution by as much as 95%. It applies to nearly 200 pollutants, including arsenic, dioxins, lead and mercury.

Republicans Sen. Shelley Moore Capito of West Virginia and Sen. John Barrasso of Wyoming, both from heavy coal-producing states, sent a letter to the EPA earlier this month asking for the change. They said

the inability of plants to escape from being classified as a major source removed an incentive to invest and make further improvements.

Environmentalists argue that the opposite is the case, and they have been successful in blocking the rule's withdrawal in the past. The EPA tried to withdraw the rule during President George W. Bush's administration, too—when Mr. Wehrum last worked at the EPA in the same office—and Congress blocked the effort. At the time, the Natural Resources Defense Council leaked an EPA internal memo in which regional EPA officials criticized the proposal. They said industrial facilities could “backslide” from having to use the stricter technology controls, which would allow them to increase pollution and still meet the standard.

Thursday's move, “drastically weakens protective limits on air pollutants...that cause cancer, brain damage, infertility, developmental problems and even death,” John Walke, the NRDC's clean air director, said in a statement. “And those harmed most would be nearby communities already suffering a legacy of pollution.”

The change will primarily help steel, paper and chemical makers among other manufacturing sites, said Jeff Holmstead, a partner at law and lobbying firm Bracewell LLP, who led the EPA's Office of Air and Radiation during Mr. Bush's first term. NRDC says hundreds of plants could be affected. The number is unclear, Mr. Holmstead said, and they would all need to go through a recertification process to benefit, he added.

“It certainly does give manufacturing plants more flexibility in terms of how they reduce their pollution,” he added. “It certainly does reduce the regulatory burden.”

## The Hill

<http://thehill.com/policy/energy-environment/370786-epa-loosens-rules-on-some-major-air-pollution-sources>

### **EPA loosens rules on some ‘major’ air pollution sources**

By Timothy Cama, 1/25/18, 5:10 PM

The Environmental Protection Agency (EPA) loosened regulatory compliance standards Thursday for certain sources of air pollution previously considered “major.”

William Wehrum, head of the EPA's air office, put out regulatory guidance repealing the “once in, always in” policy, in which facilities like power plants or factories considered “major” sources of hazardous air pollutants were always regulated as such, even if the facilities' owners took measures to reduce pollution.

“This guidance is based on a plain language reading of the statute that is in line with EPA's guidance for other provisions of the Clean Air Act,” Wehrum said in a statement. “It will reduce regulatory burden for industries and the states, while continuing to ensure stringent and effective controls on hazardous air pollutants.”

The previous standard had been enforced since 1995. “Major” air pollution sources are subject to much stricter rules for what they must do to reduce emissions such as mercury compounds and benzene.

The EPA argued that the “once in, always in” standard disincentivized companies from reducing pollution and targeted it as part of the Trump administration’s overarching goal of cutting regulatory burdens.

“Nothing in the structure of the [Clean Air Act] counsels against the plain language reading of the statute to allow major sources to become area sources after an applicable compliance date,” Wehrum wrote in his guidance.

The Natural Resources Defense Council slammed the move, saying it will cause the biggest increase in air pollution in United States history.

“This is among the most dangerous actions that the Trump EPA has taken yet against public health,” John Walke, the group’s clean air director, said in a statement. “This move drastically weakens protective limits on air pollutants like arsenic, lead, mercury and other toxins that cause cancer, brain damage, infertility, developmental problems and even death. And those harmed most would be nearby communities already suffering a legacy of pollution.”

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In a new memo, EPA air chief Bill Wehrum wrote that the “once in, always in” policy “is contrary to the plain language” of the Clean Air Act. Wehrum revoked a 1995 guidance memo outlining the policy and said EPA would consider new regulations to clarify its interpretation of the law.

Under the now-revoked guidance, any emitter that qualified as a “major” source of hazardous air pollutants would forever be subject to that tougher standard to comply with MACT rules, even if its emissions dropped low enough to be considered an “area” source subject to fewer or no requirements. Wehrum’s memo said the law does not specify that such classifications are permanent.

“EPA has now determined that a major source which takes an enforceable limit on its [potential emissions] and takes measures to bring its HAP emissions below the applicable threshold becomes an area source, no matter when the source may choose to take measures to limit its” potential pollution emissions, Wehrum wrote.

Wehrum argued that the policy shift will actually encourage sources that hesitated to install emission reduction projects to move forward. Environmentalists, however, quickly blasted the change on social media.

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WHAT'S NEXT: Wehrum's memo says EPA will “soon publish a Federal Register notice to take comment



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## Reuters

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By Eric Beech, 1/25/18, 9:37 pm

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The decision to withdraw the "once-in always-in" policy is part of President Donald Trump's effort to roll back federal regulations and was sought by utilities, the petroleum industry and others.

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"It will reduce regulatory burden for industries and the states, while continuing to ensure stringent and effective controls on hazardous air pollutants," Bill Wehrum, assistant administrator of the EPA's Office of Air and Radiation, said in a statement.

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#### Deregulatory Agenda

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But environmentalists in early reaction are calling the policy withdrawal reckless. The new policy will "allow hundreds of U.S. industrial facilities to dramatically increase their emissions of the most toxic air pollutants regulated by the Clean Air Act," the Natural Resources Defense Council (NRDC) said in a Jan. 25 statement.

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"This guidance is based on a plain language reading of the statute that is in line with EPA's guidance for other provisions of the Clean Air Act," said Bill Wehrum, assistant administrator of EPA's Office of Air and Radiation. "It will reduce regulatory burden for industries and the states, while continuing to ensure stringent and effective controls on hazardous air pollutants."

The EPA said the "once-in-always-in" policy has discouraged facilities from implementing pollution control technology to reduce emissions. Sens. John Barrasso, R-Wyo., chairman of the Senate Environment and Public Works Committee, and Shelley Moore Capito, R-W.Va., had asked the Trump administration to abandon the policy.

"The EPA's decision today is consistent with President Trump's agenda to keep America's air clean and our economy growing," Barrasso said. "Withdrawal of this policy means manufacturers, oil and gas operations, and other types of industrial facilities will have greater incentive to reduce emissions. Now these companies can help protect the environment without wasting time and money on unnecessary red tape."

Environmentalists said the EPA's change would allow facilities to emit more pollution and vowed to fight the move.

"This is among the most dangerous actions that the Trump EPA has taken yet against public health," said John Walke, clean air director and a senior attorney for the Natural Resources Defense Council. "Rolling back longstanding protections to allow the greatest increase in hazardous air pollutants in our nation's history is unconscionable. Those harmed most would be nearby and downwind communities already suffering a legacy of toxic pollution. NRDC will fight this terrible decision to unleash toxic pollutants nationwide with every available tool."

BNA

[http://esweb.bna.com/eslw/display/no\\_alpha.adp?mode=si&frag\\_id=127424104&item=408&prod=deln&cat=AGENCY](http://esweb.bna.com/eslw/display/no_alpha.adp?mode=si&frag_id=127424104&item=408&prod=deln&cat=AGENCY)

### **EPA Drops Toxic Pollutant Policy It Called Burden to Business (Corrected)**

By Sara Merken, 1/26/18

Industrial facilities that reduce their ability to emit toxic air pollutants will be exempted from some requirements to control their emissions in a move the Trump administration said will encourage companies to reduce pollution voluntarily.

The Environmental Protection Agency Jan. 25 issued a memorandum withdrawing the "once-in-always-in" policy under the Clean Air Act, which prevents major sources of toxic air pollutants from removing pollution control devices after emissions fall below a certain threshold. Instead, those facilities can now be reclassified as smaller "area" sources that are subject to less stringent requirements.

"This guidance is based on a plain language reading of the statute that is in line with EPA's guidance for other provisions of the Clean Air Act," Bill Wehrum, assistant administrator of EPA's Office of Air and Radiation, said in a statement. "It will reduce regulatory burden for industries and the states, while continuing to ensure stringent and effective controls on hazardous air pollutants."

John Walke, director of the clean air project at the Natural Resources Defense Council, called the move "unconscionable and immoral."

"This is the most reckless step taken by any EPA administrator in the agency's history," Walke told Bloomberg Environment. His group and many states will vigorously fight the action, he said.

### **Policy Began in 1995**

The policy originated in a 1995 memorandum that clarified when major sources, which release at least 10 tons per year of a single hazardous air pollutant or 25 tons of any combination of toxic pollutants each year, can be reclassified area sources.

Since area sources are not required to install stringent pollution controls known as maximum achievable control technology, or MACT, major sources can avoid MACT requirements by limiting their emissions to become area source before a certain compliance deadline.

The American Forest & Paper Association, which counts the Procter & Gamble Co. and Georgia-Pacific LLC among its members, and the American Wood Council released a joint statement Jan. 25 welcoming the EPA's action. The move also drew praise from Republican senators who called on the EPA to withdraw the policy earlier this year.

"The EPA's decision today is consistent with President Trump's agenda to keep America's air clean and

our economy growing," Sen. John Barrasso (R-Wyo.), chairman of the Senate environment committee, said in a statement. "Withdrawal of this policy means manufacturers, oil and gas operations, and other types of industrial facilities will have greater incentive to reduce emissions. Now these companies can help protect the environment without wasting time and money on unnecessary red tape."

Sens. Barrasso and Shelley Moore Capito (R-W.Va.) said the policy "disincentivizes air emissions reductions" in a Jan. 9 [letter](#) to EPA Administrator Scott Pruitt.

## Associated Press

<https://www.sfgate.com/news/politics/article/EPA-ends-clean-air-policy-opposed-by-fossil-fuel-12526165.php>

### **EPA ends clean air policy opposed by fossil fuel interests**

By Michael Biesecker, 1/25/18

The Trump administration announced Thursday it is doing away with a decades-old air emissions policy opposed by fossil fuel companies, a move that environmental groups say will result in more pollution.

The Environmental Protection Agency said it was withdrawing the "once-in always-in" policy under the Clean Air Act, which dictated how major sources of hazardous air pollutants are regulated. Under the EPA's new interpretation, such "major sources" as coal-fired power plants can be reclassified as "area sources" when their emissions fall below mandated limits, subjecting them to differing standards.

Though formal notice of the reversal has not yet been filed, EPA said the policy it has followed since 1995 relied on an incorrect interpretation of the landmark anti-pollution law.

"This guidance is based on a plain language reading of the statute that is in line with EPA's guidance for other provisions of the Clean Air Act," said Bill Wehrum, assistant administrator of EPA's Office of Air and Radiation. "It will reduce regulatory burden for industries and the states, while continuing to ensure stringent and effective controls on hazardous air pollutants."

Prior to his confirmation by the GOP-dominated Senate in November, Wehrum worked as a lawyer representing fossil fuel and chemical companies. The American Petroleum Institute was among the industry groups that had called for the longstanding policy to be scrapped.

The Clean Air Act defines a "major source" as a one that has the potential to emit 10 tons or more per year of any hazardous air pollutant, or 25 tons per year of any combination of hazardous air pollutants. For more than 20 years, EPA's "once-in always-in" required major sources to remain subject to stricter control standards, even if they took steps to reduce their pollution below the threshold.

Republicans quickly cheered the move by EPA Administrator Scott Pruitt, especially those from states that produce oil, gas and coal.

"The EPA's decision today is consistent with President Trump's agenda to keep America's air clean and our economy growing," said Senate Environment Committee Chairman John Barrasso of Wyoming. "Withdrawal of this policy means manufacturers, oil and gas operations, and other types of industrial facilities will have greater incentive to reduce emissions."

Environmentalists predicted the change would drastically weaken limits on toxic heavy metals emitted from power-plant smokestacks.

"This is among the most dangerous actions that the Trump EPA has taken yet against public health," said John Walke, the director for clean air issues at the Natural Resources Defense Council. "Rolling back longstanding protections to allow the greatest increase in hazardous air pollutants in our nation's history is unconscionable.

John Coequyt, who leads climate policy initiatives for the Sierra Club, said the move will lead directly to dirtier air and more deaths.

"Trump and Pruitt are essentially creating a massive loophole that will result in huge amounts of toxic mercury, arsenic, and lead being poured into the air we breathe, meaning this change is a threat to anyone who breathes and a benefit only to dangerous corporate polluters," Coequyt said.

**From:** Atkinson, Emily  
**Location:** WJC-N 5400 + RTP Video  
**Importance:** Normal  
**Subject:** Once In, Always In Comms Discussion  
**Start Date/Time:** Wed 1/24/2018 9:45:00 PM  
**End Date/Time:** Wed 1/24/2018 10:15:00 PM

**To:** Bill Wehrum, David Harlow, Mandy Gunasekara, Liz Bowman, John Millett, Isabel DeLuca; Tsirigotis, Peter; Koerber, Mike

**From:** Loving, Shanita

**Location:** WJC-N 5400 + Video with OAQPS + Ex. 6 - Personal Privacy Participant Code:

Ex. 6 - Personal Privacy

**Importance:** Normal

**Subject:** Once-in, Always-in Policy Revision

**Start Date/Time:** Mon 12/18/2017 7:00:00 PM

**End Date/Time:** Mon 12/18/2017 7:45:00 PM

Wehrum Meeting Request - Once-in Always-in Policy Revision.docx

**To:** Wehrum, Bill; Mandy Gunasekara ([Gunasekara.Mandy@epa.gov](mailto:Gunasekara.Mandy@epa.gov)); Harlow, David; Lewis, Josh; Page, Steve; Koerber, Mike; Harnett, Bill; Tsirigotis, Peter; Lamason, Bill; Wood, Anna; Kornylak, Vera S.; Rodman, Sonja; Jordan, Scott; Vetter, Rick; Dalcher, Debra; Woods, Clint; Noonan, Jenny

**Cc:** Alston, Lala; Johnson, Tanya; McKinney, Voronina; Eck, Janet



**From:** Microsoft Outlook

**Location:** WJC-N 5400 + Video with OAQPS + Ex. 6 - Personal Privacy Participant Code: Ex. 6 - Personal Privacy

Ex. 6 - Personal Privacy

**Importance:** Normal

**Subject:** Once-in, Always-in Policy Revision

**Start Date/Time:** Wed 12/20/2017 9:00:00 PM

**End Date/Time:** Wed 12/20/2017 10:00:00 PM

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Sent by Microsoft Exchange Server

**From:** Santiago, Juan

**Location:** WJC-N 5400 + Video with OAQPS + Ex. 6 - Personal Privacy Participant Code: Ex. 6 - Personal Privacy

**Importance:** Normal

**Subject:** Accepted: Once-in, Always-in Policy Revision

**Start Date/Time:** Mon 12/18/2017 7:00:00 PM

**End Date/Time:** Mon 12/18/2017 8:00:00 PM

**From:** Harnett, Bill

**Location:** WJC-N 5400 + Video with OAQPS + Ex. 6 - Personal Privacy Participant Code: Ex. 6 - Personal Privacy

Ex. 6 - Personal Privacy

**Importance:** Normal

**Subject:** Accepted: Once-in, Always-in Policy Revision

**Start Date/Time:** Wed 12/20/2017 9:00:00 PM

**End Date/Time:** Wed 12/20/2017 10:00:00 PM

**From:** Wood, Anna

**Location:** WJC-N 5400 + Video with OAQPS + Ex. 6 - Personal Privacy Participant Code: Ex. 6 - Personal Privacy

**Importance:** Normal

**Subject:** Tentative: Once-in, Always-in Policy Revision

**Start Date/Time:** Wed 12/20/2017 9:00:00 PM

**End Date/Time:** Wed 12/20/2017 10:00:00 PM

**From:** Kornylak, Vera S.

**Location:** WJC-N 5400 + Video with OAQPS + Ex. 6 - Personal Privacy Participant Code: Ex. 6 - Personal Privacy

Ex. 6 - Personal Privacy

**Importance:** Normal

**Subject:** Accepted: Once-in, Always-in Policy Revision

**Start Date/Time:** Wed 12/20/2017 9:00:00 PM

**End Date/Time:** Wed 12/20/2017 10:00:00 PM

**From:** Vetter, Rick

**Location:** WJC-N 5400 + Video with OAQPS + Ex. 6 - Personal Privacy Participant Code: Ex. 6 - Personal Privacy

Ex. 6 - Personal Privacy

**Importance:** Normal

**Subject:** Accepted: Once-in, Always-in Policy Revision

**Start Date/Time:** Wed 12/20/2017 9:00:00 PM

**End Date/Time:** Wed 12/20/2017 10:00:00 PM

**To:** Wehrum, Bill[Wehrum.Bill@epa.gov]  
**From:** POLITICO Pro Energy Whiteboard  
**Sent:** Tue 1/30/2018 4:04:56 PM  
**Subject:** Pruitt: 'Once in, always in' rule change was policy decision

By Annie Snider

01/30/2018 11:02 AM EDT

EPA Administrator Scott Pruitt said this morning that last week's decision to end Clinton-era "once in, always in" Clean Air Act requirements was not made by the agency's air experts.

"That was a decision that was made outside of the program office of air. It was a policy office decision," Pruitt told the Senate Environment and Public Works Committee.

The comment came in response to a question from Sen. Tom Carper of Delaware, the top Democrat on the committee, about whether the agency conducted an analysis of the potential health effects of the policy change.

"I find it incredible that EPA did this seemingly without knowing or caring about potential health effects of its action," Carper said.

The "once in always in," codified in now revoked 1995 policy guidance, was designed to prevent major emitters like power plants and factories from getting out of tough requirements to limit their toxic air emissions. It required that any emitter that qualified as a "major" source of hazardous air pollutants would permanently be subject to that tougher standard to comply with MACT rules, even if its emissions dropped low enough to be considered an "area" source subject to fewer or no requirements.

*To view online:*

<https://www.politicopro.com/energy/whiteboard/2018/01/pruitt-once-in-always-in-rule-change-was-policy-decision-503744>

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Arlington, VA, 22209, USA

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**To:** Lubetsky, Jonathan[Lubetsky.Jonathan@epa.gov]; Wehrum, Bill[Wehrum.Bill@epa.gov];  
Lewis, Josh[Lewis.Josh@epa.gov]  
**From:** cmsadmin@epa.gov  
**Sent:** Tue 1/30/2018 1:17:29 PM  
**Subject:** CMS For Review - Maria Carroll - AL-18-000-3332

Control AL-18-000-3332 is in your CMS In Box for review. Please go to the CMS webpage to view the details of the control.

Summary Information -

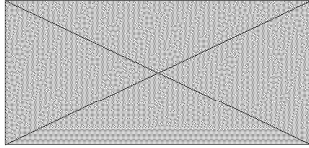
Control Number: AL-18-000-3332

Control Subject: RE: RESCINDE A CURRENT EPA POLICY "ONCE-IN-ALWAYS-IN" UNDER THE  
CLEAN AIR ACT

From: Barrasso, John; Capito, Shelley Moore

Note: This Email was automatically generated. Please do not attempt to respond to it. You can access this control at <https://cms.epa.gov/cms>. Questions or comments concerning CMS should be directed to CMS Support at 202-564-4985 or CMS Information@epa.gov.

**To:** Wehrum, Bill[Wehrum.Bill@epa.gov]  
**From:** Environmental Law360  
**Sent:** Mon 1/29/2018 8:37:03 AM  
**Subject:** [SPAM-Sender] 4 Takeaways From DOI's About-Face On Migratory Bird Kills



## ENVIRONMENTAL

Monday, January 29, 2018

### TOP NEWS

#### Analysis

#### **4 Takeaways From DOI's About-Face On Migratory Bird Kills**

The Trump administration Interior Department has departed from decades of agency precedent by stating it won't criminally prosecute individuals and companies for the accidental injuring or killing of migratory birds — dramatically reducing pressure on energy and communications businesses and setting up a legal battle with environmentalists. Here are 4 big takeaways from the DOI's decision. [Read more »](#)

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#### **EPA Backtracks, Now Says Pebble Mine May Be Too Risky**

The U.S. Environmental Protection Agency on Friday said it's having second thoughts about letting plans for a massive open-pit mine in Alaska near the world's largest sockeye salmon fishery proceed, suggesting the environmental concerns may be too great to allow the project to go forward — a win for green groups that oppose the mine. [Read more »](#)

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#### **EPA Formaldehyde Rule Delay 'Eviscerates' Law, Enviro Say**

Environmental groups and the U.S. Environmental Protection Agency fought before a California federal judge Friday over whether the agency should be allowed to push back the deadline for the industry to comply with new formaldehyde emissions standards, with the groups arguing the delay effectively "eviscerates" the statute. [Read more »](#)

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#### **Kimberly-Clark, Others To Pay \$3.9M In Bay Pollution Spat**

Three current and former property owners in the Port Gardner Bay Area in the state of Washington, including Kimberly-Clark Corp., have said they will cough up about \$3.9 million collectively for alleged damages to natural resources, according to a proposed deal filed Thursday. [Read more »](#)

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### POLICY & REGULATION

#### **EPA Yanks Once-In, Always-In Air Pollution Policy**

[Dentons](#)  
[Earthjustice](#)

The U.S. Environmental Protection Agency on Thursday rescinded a 1995 policy that said any facility considered to be a “major” polluter under the Clean Air Act could never be recategorized as a less prolific polluter. [Read more »](#)

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### **EU Eyes New Rules To Boost Collective Consumer Actions**

The European Commission expressed dissatisfaction on Friday at the progress that member states have made during the past several years in implementing consistent collective redress mechanisms that would allow consumers to band together to sue over privacy, environmental, antitrust and a range of other violations, and promised to propose a new framework by the spring. [Read more »](#)

[Arnold & Porter Kaye Scholer](#)

### **BLM OKs Federal Land Exchange With Agua Caliente Tribe**

The U.S. Bureau of Land Management on Thursday gave final environmental approval to a proposed land exchange between the agency and the Agua Caliente Band of Cahuilla Indians that would reduce the “checkerboard” land ownership within a national monument in Southern California. [Read more »](#)

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[Bracewe](#)

### **Pa. Gov, DEP Say Reforms, More Staff Will Cut Permit Delays**

Pennsylvania Gov. Tom Wolf and the secretary of the Department of Environmental Protection on Friday outlined a plan to reduce permitting delays amid frustration from the oil and gas industry, pushing simplified bureaucracy, increased staffing and legislative changes. [Read more »](#)

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## **LITIGATION**

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### **Records Law Doesn't Apply To Pipeline Co., La. Judge Says**

A Louisiana state judge on Thursday denied a bid by a coalition of activists that requested records from the company building a 163-mile crude oil pipeline in the state, denying the groups' arguments that the public records law applied to a private entity. [Read more »](#)

[Debevoise & Plimpton](#)

[Dentons](#)

### **Zoo Tries To Nix Judge In PETA Suit Over Animal Dwellings**

A Maryland zoo moved Thursday to disqualify the judge in a suit brought by animal rights group People for the Ethical Treatment of Animals over allegedly substandard conditions for endangered animals, arguing he had conducted independent internet research and expressed concern for animals that called his objectivity into question. [Read more »](#)

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Analysis

### **High Court Fight Pits Tribal Rights Against \$2B Repair Tab**

[Gibson Dunn](#)

The U.S. Supreme Court's decision to weigh a Ninth Circuit ruling that the state of Washington must replace hundreds of culverts to protect Native American tribes' salmon fishing will test how far the justices are willing to go to protect tribal treaty rights in the face of what Washington claims will be a nearly \$2 billion outlay. [Read more »](#)

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## LEGAL INDUSTRY

### How #MeToo Is Changing Internal Investigations

Lawyers who run internal investigations are getting plenty of new work amid the recent wave of high-profile sexual harassment and assault allegations. They're also facing new risks and demands. [Read more »](#)

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### Pa. Atty Accused Of Stealing To Buy Sex Toys Loses License

A fired attorney charged with breaking into her former firm to steal money and credit cards that she used to purchase sex toys online has had her law license suspended, Pennsylvania authorities said Thursday. [Read more »](#)

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Analysis

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### Why Compliance Is Keeping Corporate Counsel Up At Night

[Bracewell](#)

Even as the presidential administration enters its second year talking big about its plans to ease regulation, corporate counsel report their primary concern for the coming year is the management of government regulation and compliance. Here is why this one issue weighs so heavily on the minds of in-house counsel. [Read more »](#)

[Cleary](#)  
[Gottlieb](#)

[Cooley](#)

### Ethics Training For Attys Should Aim Higher, Sotomayor Says

The education of lawyers should be improved to include a more robust ethics training that goes beyond merely setting a floor for acceptable conduct, U.S. Supreme Court Sonia Sotomayor said Friday during an event at the University of Houston Law Center. [Read more »](#)

[Covington](#)  
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### GC Cheat Sheet: The Hottest Corporate News Of The Week

The NBA's general counsel told lawmakers it's time for legalized sports betting, experts shared with Law360 ways companies and their legal counsel can prepare for potential worksite enforcements by federal immigration officials, and Baker Donelson Bearman Caldwell & Berkowitz PC announced its hire of GE Capital's former general counsel. These are some of the stories in corporate legal news you may have missed in the past week. [Read more »](#)

[Debevoise](#)  
&  
[Plimpton](#)

[Dentons](#)

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### In Case You Missed It: Hottest Firms And Stories On Law360

For those who missed out, here's a look back at the law firms, stories and expert analyses that generated the most buzz on Law360 last week. [Read more »](#)

[Galanda](#)  
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Podcast

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[Dunn](#)

### Law360's Pro Say: The Decline And Fall Of Sedgwick LLP

On the latest episode of Law360's Pro Say podcast, the team does a post mortem on the fall of BigLaw fixture Sedgwick LLP, discusses a Starbucks case that may give landlords a

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and  
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legal roadmap to stop store closures, explains a case barring a strip club from enforcing "sham" arbitration pacts, and reviews a musical sendup of Preet Bharara. [Read more »](#)

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Gates

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Katzen

Katz  
Marshall

Kirkland  
& Ellis

Latham  
&  
Watkins

Maclay  
Murray

McDerm  
Will

Morgan  
Lewis

Orrick  
Herringt

Paul  
Weiss

Perkins  
Coie

Quinn  
Emanue

Schwab  
Williams

Sedgwick  
LLP

Sidley  
Austin

Skadder

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&  
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Constitu  
Rights

Consilio  
LLC

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Employment  
Opportunity  
Commission

European  
Commission

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Communications  
Commission

Federal  
Trade  
Commission

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and  
Wildlife  
Service

Internal  
Revenue  
Service

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Tribe

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and  
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Commis:

Suquam  
Tribe

Tulalip  
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Washing

U.S.  
Army

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Agricultu

U.S.  
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of  
Justice

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Departm  
of the  
Interior

U.S.  
Environr  
Protectic  
Agency

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Forest  
Service

U.S.  
Supreme  
Court

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Haynes and Boone

Hogan Lovells

Hunton & Williams

Jackson Lewis

Jones Day

Kanji & Katzen

Katz Marshall

Kirkland & Ellis

Latham & Watkins

MacLay Murray

McDermott Will

Orrick Herrington

Paul Weiss

Quinn Emanuel

Schwabe Williamson

Skadden

Stroock & Stroock

Weil Gotshal

WilmerHale

Zuckerman Spaeder

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Major League Baseball Inc.

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Miramax Film Corp.

National Basketball Association

Natural Resources Defense Council

New England Patriots

New York City Bar Association

New York Times Co.

Northern Dynasty Minerals Ltd.

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Robert Half International Inc.

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Volkswagen

Weyerhaeuser Co.

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GOVERNMENT AGENCIES

U.S. Department of Justice

U.S. Environmental Protection Agency

U.S. Supreme Court

Army Corps of Engineers

Bureau of Land Management

Equal Employment Opportunity Commission

Fish and Wildlife Service

Suquamish Tribe

U.S. Army

Agua Caliente Band of Cahuilla Indians

California Air Resources Board

European Commission

Federal Communications Commission

Federal Trade Commission

Internal Revenue Service

Jamestown S'Klallam Tribe

Lower Elwha Klallam Tribe

NAFTA

New York Attorney General's Office

New York State Senate

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Securities and Exchange Commission

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**To:** Block, Molly[block.molly@epa.gov]; Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]; Wehrum, Bill[Wehrum.Bill@epa.gov]  
**From:** Bowman, Liz  
**Sent:** Fri 1/26/2018 11:35:04 PM  
**Subject:** RE: Once In Always In News Coverage

Headline could be worse...

**From:** Block, Molly  
**Sent:** Friday, January 26, 2018 2:03 PM  
**To:** Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Wehrum, Bill <Wehrum.Bill@epa.gov>  
**Cc:** Bowman, Liz <Bowman.Liz@epa.gov>  
**Subject:** RE: Once In Always In News Coverage

And one more:

## **E&E News**

<https://www.eenews.net/greenwire/2018/01/26/stories/1060072119>

### **EPA Kills Clinton-Era Industrial Standards**

Sean Reilly, 1/26/18

Barely two weeks after Republican lawmakers sought to scrap a Clinton-era air policy intended to limit industrial pollution, U.S. EPA air chief Bill Wehrum obliged yesterday, saying in a memo that the "once in, always in" policy ran contrary to the Clean Air Act.

Wehrum's decision, effective immediately, won swift applause from industry groups but denunciations from environmental organizations, one of which vowed to fight it "with every available tool."

The policy, dating back to 1995, had applied to factories and other "major" industrial pollution

sources subject to maximum achievable control technology (MACT) standards because they annually release more than 10 tons of a single air toxic or 25 tons of any combination of hazardous pollutants.

Under the policy, the standards remained in place even if a facility's emissions dropped below the relevant thresholds on the grounds that a polluter could otherwise backslide.

But in yesterday's memo, Wehrum said that interpretation was not authorized by the "plain language" of the Clean Air Act. Revoking it "will reduce regulatory burden for industries and the states, while continuing to ensure stringent and effective controls on hazardous air pollutants," he said in an accompanying press release. EPA plans to seek public comment, he indicated in the memo.

Repeal was welcomed by Senate Environment and Public Works Chairman John Barrasso (R-Wyo.). Together with Sen. Shelley Moore Capito (R-W.Va.), Barrasso had urged EPA earlier this month to scrap the policy, saying that it in fact acted as disincentive to curb emissions (E&E Daily, Jan. 10). In a press release yesterday, he called Wehrum's decision "consistent with President Trump's agenda to keep America's air clean and our economy growing."

Also praising the move was the American Forest & Paper Association, where President and CEO Donna Harman said it would reduce and "remove disincentives to voluntary efforts and technical innovations that could reduce emissions."

John Walke, clean air director at the Natural Resources Defense Council, ranked repeal among the "most dangerous actions" yet taken by the Trump administration and said it "drastically weakens" protective limits on arsenic, lead and other air pollutants.

"NRDC will fight this terrible decision to unleash toxic pollutants with every available tool," Walke said.

In ending the "once, in always in" policy, Wehrum could be seen as tending to unfinished business dating back to his stint as acting EPA air chief from 2005 to 2007 during George W.

Bush's administration. During that time, EPA proposed rescinding the 1995 directive but was blocked by Congress. While EPA never took final action on that 2007 proposal, Wehrum wrote yesterday, it was never withdrawn.

**From:** Block, Molly

**Sent:** Friday, January 26, 2018 1:07 PM

**To:** Gunasekara, Mandy <[Gunasekara.Mandy@epa.gov](mailto:Gunasekara.Mandy@epa.gov)>; Wehrum, Bill <[Wehrum.Bill@epa.gov](mailto:Wehrum.Bill@epa.gov)>

**Cc:** Bowman, Liz <[Bowman.Liz@epa.gov](mailto:Bowman.Liz@epa.gov)>

**Subject:** Once In Always In News Coverage

Coverage linked below and attached.

**“Once In Always In” Coverage**

[Wall Street Journal: EPA Withdraws Air Pollution Policy](#)

[The Hill: EPA loosens rules on some ‘major’ air pollution sources](#)

[Politico: EPA drops ‘once in, always in’ policy from key Clean Air Act requirements](#)

[Reuters: U.S. EPA Reverse Policy on ‘Major Sources’ of Pollution](#)

[Inside EPA: EPA Ends ‘Once In, Always In’ Air Policy, Easing Facilities’ MACT Mandates](#)

[Washington Examiner: EPA Weakens Rules on Emissions From Polluters](#)

[BNA: EPA Drops Toxic Pollutant Policy It Called Burden to Business](#)

[Associated Press: EPA ends clean air policy opposed by fossil fuel interests](#)

## Wall Street Journal

<https://www.wsj.com/articles/epa-withdraws-air-pollution-policy-1516935178?mod=searchresults&page=1&pos=4>

**EPA Withdraws Air Pollution Policy**

By Timothy Puko, 1/25/18, 9:52 AM

WASHINGTON—The Trump administration is withdrawing a decades-old air policy aimed at reining in some of the largest sources of hazardous pollutants like mercury and lead.

The Environmental Protection Agency said late Thursday it is getting rid of requirements that it forever keep sites classified as “major sources” of hazardous air pollution once they meet that classification. This “once-in always-in” policy punished industry by keeping factories and other sites under heavy regulation even if they made improvements that would prevent them from being major sources of pollution, according to the EPA and lawmakers who had requested the move.

Environmentalists and congressional critics decried the change, saying it is one of the EPA’s bedrock environmental regulations that keeps polluters from trimming back to just below the major-source classification cutoff to avoid requirements that could further lower their emissions.

President Donald Trump has made a rollback of environmental regulations one of his signature issues, carrying out a main campaign promise by withdrawing or rewriting rules designed to fight climate change, coal-ash pollution and coastal flooding, among many others. It is part of a broad attempt to make oil companies, power plants and manufacturers, among several different industries, more competitive by lowering their costs.

The latest change “will reduce regulatory burden for industries and the states, while continuing to ensure stringent and effective controls on hazardous air pollutants,” Bill Wehrum, assistant administrator of the EPA’s Office of Air and Radiation, said in a statement.

The policy, dating back to 1995, requires facilities that annually emit 10 tons or more of a single air pollutant or 25 tons or more of a group of pollutants to use the maximum achievable technology controls to lower their pollution. Deploying the technology required by that standard can lower pollution by as much as 95%. It applies to nearly 200 pollutants, including arsenic, dioxins, lead and mercury.

Republicans Sen. Shelley Moore Capito of West Virginia and Sen. John Barrasso of Wyoming, both from heavy coal-producing states, sent a letter to the EPA earlier this month asking for the change. They said the inability of plants to escape from being classified as a major source removed an incentive to invest and make further improvements.

Environmentalists argue that the opposite is the case, and they have been successful in blocking the rule's withdrawal in the past. The EPA tried to withdraw the rule during President George W. Bush's administration, too—when Mr. Wehrum last worked at the EPA in the same office—and Congress blocked the effort. At the time, the Natural Resources Defense Council leaked an EPA internal memo in which regional EPA officials criticized the proposal. They said industrial facilities could “backslide” from having to use the stricter technology controls, which would allow them to increase pollution and still meet the standard.

Thursday's move, “drastically weakens protective limits on air pollutants...that cause cancer, brain damage, infertility, developmental problems and even death,” John Walke, the NRDC's clean air director, said in a statement. “And those harmed most would be nearby communities already suffering a legacy of pollution.”

The change will primarily help steel, paper and chemical makers among other manufacturing sites, said Jeff Holmstead, a partner at law and lobbying firm Bracewell LLP, who led the EPA's Office of Air and Radiation during Mr. Bush's first term. NRDC says hundreds of plants could be affected. The number is unclear, Mr. Holmstead said, and they would all need to go through a recertification process to benefit, he added.

“It certainly does give manufacturing plants more flexibility in terms of how they reduce their pollution,” he added. “It certainly does reduce the regulatory burden.”

## The Hill

<http://thehill.com/policy/energy-environment/370786-epa-loosens-rules-on-some-major-air-pollution-sources>

**EPA loosens rules on some ‘major’ air pollution sources**

By Timothy Cama, 1/25/18, 5:10 PM

The Environmental Protection Agency (EPA) loosened regulatory compliance standards Thursday for certain sources of air pollution previously considered "major."

William Wehrum, head of the EPA's air office, put out regulatory guidance repealing the "once in, always in" policy, in which facilities like power plants or factories considered "major" sources of hazardous air pollutants were always regulated as such, even if the facilities' owners took measures to reduce pollution.

"This guidance is based on a plain language reading of the statute that is in line with EPA's guidance for other provisions of the Clean Air Act," Wehrum said in a statement. "It will reduce regulatory burden for industries and the states, while continuing to ensure stringent and effective controls on hazardous air pollutants."

The previous standard had been enforced since 1995. "Major" air pollution sources are subject to much stricter rules for what they must do to reduce emissions such as mercury compounds and benzene.

The EPA argued that the "once in, always in" standard disincentivized companies from reducing pollution and targeted it as part of the Trump administration's overarching goal of cutting regulatory burdens.

"Nothing in the structure of the [Clean Air Act] counsels against the plain language reading of the statute to allow major sources to become area sources after an applicable compliance date," Wehrum wrote in his guidance.

The Natural Resources Defense Council slammed the move, saying it will cause the biggest increase in air pollution in United States history.

“This is among the most dangerous actions that the Trump EPA has taken yet against public health,” John Walke, the group’s clean air director, said in a statement. “This move drastically weakens protective limits on air pollutants like arsenic, lead, mercury and other toxins that cause cancer, brain damage, infertility, developmental problems and even death. And those harmed most would be nearby communities already suffering a legacy of pollution.”

## Politico

<https://www.politicopro.com/energy/whiteboard/2018/01/epa-drops-once-in-always-in-policy-from-key-clean-air-act-requirements-480570>

### **EPA drops ‘once in, always in’ policy from key Clean Air Act requirements**

By Alex Guillen, 1/25/18, 6:11 PM

EPA today withdrew a Clinton-era policy that was designed to prevent major emitters like power plants and factories from getting out of tough requirements to limit their toxic air emissions.

In a new memo, EPA air chief Bill Wehrum wrote that the "once in, always in" policy “is contrary to the plain language” of the Clean Air Act. Wehrum revoked a 1995 guidance memo outlining the policy and said EPA would consider new regulations to clarify its interpretation of the law.

Under the now-revoked guidance, any emitter that qualified as a "major" source of hazardous air pollutants would forever be subject to that tougher standard to comply with MACT rules, even if its emissions dropped low enough to be considered an "area" source subject to fewer or no requirements. Wehrum's memo said the law does not specify that such classifications are permanent.

“EPA has now determined that a major source which takes an enforceable limit on its [potential emissions] and takes measures to bring its HAP emissions below the applicable threshold becomes an area source, no matter when the source may choose to take measures to limit its” potential pollution emissions, Wehrum wrote.



Wehrum argued that the policy shift will actually encourage sources that hesitated to install emission reduction projects to move forward. Environmentalists, however, quickly blasted the change on social media.

The Bush administration twice attempted to change the OIAI policy but never succeeded.

WHAT'S NEXT: Wehrum's memo says EPA will "soon publish a Federal Register notice to take comment on adding regulatory text that will reflect EPA's plain language reading of the statute."

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## Reuters

<https://www.reuters.com/article/us-usa-trump-epa/u-s-epa-reverses-policy-on-major-sources-of-pollution-idUSKBN1FF075>

### **U.S. EPA Reverse Policy on ‘Major Sources’ of Pollution**

By Eric Beech, 1/25/18, 9:37 pm

The U.S. Environmental Protection Agency said on Thursday it was withdrawing a provision of the Clean Air Act that requires a major source of pollution like a power plant to always be treated as a major source, even if it makes changes to reduce emissions.

The decision to withdraw the “once-in always-in” policy is part of President Donald Trump’s effort to roll back federal regulations and was sought by utilities, the petroleum industry and others.

Sources of air pollution previously classified as “major sources” may be reclassified as “area” sources when the facility limits its emissions below “major source” thresholds, the EPA said. Area sources are subject to less strict pollution control standards than major sources.

“It will reduce regulatory burden for industries and the states, while continuing to ensure stringent and effective controls on hazardous air pollutants,” Bill Wehrum, assistant administrator of the EPA’s Office of Air and Radiation, said in a statement.

The “once-in always-in” policy, which was established in 1995, has been a disincentive for power plants, factories and other major sources of pollution to pursue technological innovations that would reduce emissions, the agency said.

The Natural Resources Defense Council, an environmental group, said the decision “is among the most dangerous actions that the Trump EPA has taken yet against public health.”

“This move drastically weakens protective limits on air pollutants like arsenic, lead, mercury and other toxins that cause cancer, brain damage, infertility, developmental problems and even death,” John Walke, director of a clean air program for the NRDC, said in a statement.

## Inside EPA

<https://insideepa.com/daily-news/epa-ends-once-always-air-policy-easing-facilities-mact-mandates>

### **EPA Ends ‘Once In, Always In’ Air Policy, Easing Facilities’ MACT Mandates**

By Stuart Parker, 1/25/18

EPA has withdrawn its contested “once in, always in” policy that subjected industrial facilities to strict maximum achievable control technology (MACT) air toxics rules for their lifetime even if they reduced and kept emissions below MACT levels, a major win for GOP senators, the Commerce Department and others who oppose the policy.

In a Jan. 25 “[guidance](#)” memo sent to EPA's regional air directors, the agency's air chief William Wehrum rescinds the 1995 policy, clearing the way for plants to reduce their potential to emit (PTE) and escape MACT emissions limits if they keep their emissions below MACT limits.

MACT limits apply to “major” sources of hazardous air pollutants (HAPs), defined as those sources emitting in excess of 10 tons per year (tpy) of one HAP or 25 tpy of a combination of HAPs.

“This guidance is based on a plain language reading of the statute that is in line with EPA’s guidance for other provisions of the Clean Air Act,” said Wehrum in a statement. “It will reduce regulatory burden for industries and the states, while continuing to ensure stringent and effective controls on hazardous air pollutants.”

EPA in the statement adds that the policy “has been a longstanding disincentive for sources to implement voluntary pollution abatement and prevention efforts, or to pursue technological innovations that would reduce hazardous air pollution emissions,” saying the move is part of the Trump administration's deregulatory agenda.

Sources that limit their PTE below the major source thresholds will now be considered “area sources” subject to less-stringent air pollution control requirements.

Wehrum in the memo writes, “EPA has now determined that a major source which takes an enforceable limit on its PTE and takes measures to bring its HAP emissions below the applicable threshold becomes an area source, no matter when the source may choose to take measures to limit its PTE.”

He notes, “Congress placed no temporal limitations on the determination of whether a source emits or has” the potential to emit HAPs “in sufficient quantity to qualify as a major source.”

Wehrum in the memo says that “EPA anticipates that it will soon publish a Federal Register notice to take comment on adding regulatory text that will reflect EPA's plain language reading of the statute.”

The notice will give critics of the move an opportunity to comment and potentially lay the foundation for eventual litigation against either the memo or a resulting regulation to implement the decision.

#### Deregulatory Agenda

Industry groups and others responding to earlier Trump administration solicitations for comment on what deregulatory steps would be helpful cited ending the policy as one step that EPA should take.

For example, the Commerce Department in [a regulatory review report last year](#) urged the agency to “review the 'once in, always in' policy to clarify the means by which a facility currently classified as a major source can become an area source,” identifying it as a potential barrier to industry.

Sources told Inside EPA last year that the White House appears to be [supporting states' calls](#) to overhaul smaller “in-the-weeds” EPA rules such as the once in, always in policy, in lieu of calls

to undo “big ticket” Obama-era policies.

More recently, Senate Environment & Public Works Committee (EPW) Chairman John Barrasso (R-WY) and EPW clean air panel Chairman Shelley Moore Capito (R-WV) sent a Jan. 9 letter to EPA Administrator Scott Pruitt urging him to end the policy. They argued that the policy serves to discourage, rather than promote, emissions reductions.

But environmentalists in early reaction are calling the policy withdrawal reckless. The new policy will “allow hundreds of U.S. industrial facilities to dramatically increase their emissions of the most toxic air pollutants regulated by the Clean Air Act,” the Natural Resources Defense Council (NRDC) said in a Jan. 25 statement.

NRDC Clean Air Director John Walke said, “This is among the most dangerous actions that the Trump EPA has taken yet against public health. Rolling back longstanding protections to allow the greatest increase in hazardous air pollutants in our nation's history is unconscionable.”

Walke promises NRDC “will fight this terrible decision to unleash toxic pollutants with every available tool.” However, because it is a guidance memo rather than a regulation, environmentalists may find the move harder to challenge in court, where it may be more difficult to establish as a “final agency action” subject to judicial review.

## Washington Examiner

<http://www.washingtonexaminer.com/epa-weakens-rules-on-emissions-from-polluters/article/2647110>

### EPA Weakens Rules on Emissions From Polluters

By Josh Siegel, 1/25/18, 5:49 pm

The Environmental Protection Agency on Thursday withdrew a policy that imposed strict limits on hazardous air pollutants emitted by factories, plants, or other types of facilities considered “major” polluters.

The longstanding “once-in-always-in” policy, established in 1995, said major polluting facilities failing to meet certain emission thresholds always had to meet those standards from then on, even if the facility made changes to reduce its pollution.

With the new Trump administration policy, sources of hazardous air pollutants previously classified as “major sources” for their high amount of polluting may be reclassified as “area” sources when the facility limits its potential to emit pollution.

“This guidance is based on a plain language reading of the statute that is in line with EPA’s guidance for other provisions of the Clean Air Act,” said Bill Wehrum, assistant administrator of EPA’s Office of Air and Radiation. “It will reduce regulatory burden for industries and the states, while continuing to ensure stringent and effective controls on hazardous air pollutants.”

The EPA said the “once-in-always-in” policy has discouraged facilities from implementing pollution control technology to reduce emissions. Sens. John Barrasso, R-Wyo., chairman of the Senate Environment and Public Works Committee, and Shelley Moore Capito, R-W.Va., had asked the Trump administration to abandon the policy.

“The EPA’s decision today is consistent with President Trump’s agenda to keep America’s air clean and our economy growing,” Barrasso said. “Withdrawal of this policy means manufacturers, oil and gas operations, and other types of industrial facilities will have greater incentive to reduce emissions. Now these companies can help protect the environment without wasting time and money on unnecessary red tape.”

Environmentalists said the EPA’s change would allow facilities to emit more pollution and vowed to fight the move.

“This is among the most dangerous actions that the Trump EPA has taken yet against public health,” said John Walke, clean air director and a senior attorney for the Natural Resources Defense Council. “Rolling back longstanding protections to allow the greatest increase in hazardous air pollutants in our nation’s history is unconscionable. Those harmed most would be nearby and downwind communities already suffering a legacy of toxic pollution. NRDC will fight this terrible decision to unleash toxic pollutants nationwide with every available tool.”

## BNA

[http://esweb.bna.com/eslw/display/no\\_alpha.adp?mode=si&frag\\_id=127424104&item=408&prod=deln&cat=A](http://esweb.bna.com/eslw/display/no_alpha.adp?mode=si&frag_id=127424104&item=408&prod=deln&cat=A)

### **EPA Drops Toxic Pollutant Policy It Called Burden to Business (Corrected)**

By Sara Merken, 1/26/18

Industrial facilities that reduce their ability to emit toxic air pollutants will be exempted from some requirements to control their emissions in a move the Trump administration said will encourage companies to reduce pollution voluntarily.

The Environmental Protection Agency Jan. 25 issued a memorandum withdrawing the “once-in-always-in” policy under the Clean Air Act, which prevents major sources of toxic air pollutants

from removing pollution control devices after emissions fall below a certain threshold. Instead, those facilities can now be reclassified as smaller “area” sources that are subject to less stringent requirements.

“This guidance is based on a plain language reading of the statute that is in line with EPA's guidance for other provisions of the Clean Air Act,” Bill Wehrum, assistant administrator of EPA's Office of Air and Radiation, said in a statement. “It will reduce regulatory burden for industries and the states, while continuing to ensure stringent and effective controls on hazardous air pollutants.”

John Walke, director of the clean air project at the Natural Resources Defense Council, called the move “unconscionable and immoral.”

“This is the most reckless step taken by any EPA administrator in the agency's history,” Walke told Bloomberg Environment. His group and many states will vigorously fight the action, he said.

### **Policy Began in 1995**

The policy originated in a 1995 memorandum that clarified when major sources, which release at least 10 tons per year of a single hazardous air pollutant or 25 tons of any combination of toxic pollutants each year, can be reclassified area sources.

Since area sources are not required to install stringent pollution controls known as maximum achievable control technology, or MACT, major sources can avoid MACT requirements by limiting their emissions to become area source before a certain compliance deadline.

The American Forest & Paper Association, which counts the Procter & Gamble Co. and Georgia-Pacific LLC among its members, and the American Wood Council released a joint statement Jan. 25 welcoming the EPA's action. The move also drew praise from Republican senators who called on the EPA to withdraw the policy earlier this year.

“The EPA's decision today is consistent with President Trump's agenda to keep America's air clean and our economy growing,” Sen. John Barrasso (R-Wyo.), chairman of the Senate environment committee, said in a statement. “Withdrawal of this policy means manufacturers, oil and gas operations, and other types of industrial facilities will have greater incentive to reduce emissions. Now these companies can help protect the environment without wasting time and money on unnecessary red tape.”

Sens. Barrasso and Shelley Moore Capito (R-W.Va.) said the policy “disincentivizes air emissions reductions” in a Jan. 9 [letter](#) to EPA Administrator Scott Pruitt.

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## Associated Press

<https://www.sfgate.com/news/politics/article/EPA-ends-clean-air-policy-opposed-by-fossil-fuel-12526165.php>

### **EPA ends clean air policy opposed by fossil fuel interests**

By Michael Biesecker, 1/25/18

The Trump administration announced Thursday it is doing away with a decades-old air emissions policy opposed by fossil fuel companies, a move that environmental groups say will result in more pollution.

The Environmental Protection Agency said it was withdrawing the "once-in always-in" policy under the Clean Air Act, which dictated how major sources of hazardous air pollutants are regulated. Under the EPA's new interpretation, such "major sources" as coal-fired power plants can be reclassified as "area sources" when their emissions fall below mandated limits, subjecting them to differing standards.

Though formal notice of the reversal has not yet been filed, EPA said the policy it has followed since 1995 relied on an incorrect interpretation of the landmark anti-pollution law.

"This guidance is based on a plain language reading of the statute that is in line with EPA's guidance for other provisions of the Clean Air Act," said Bill Wehrum, assistant administrator of EPA's Office of Air and Radiation. "It will reduce regulatory burden for industries and the states, while continuing to ensure stringent and effective controls on hazardous air pollutants."

Prior to his confirmation by the GOP-dominated Senate in November, Wehrum worked as a

lawyer representing fossil fuel and chemical companies. The American Petroleum Institute was among the industry groups that had called for the longstanding policy to be scrapped.

The Clean Air Act defines a "major source" as a one that has the potential to emit 10 tons or more per year of any hazardous air pollutant, or 25 tons per year of any combination of hazardous air pollutants. For more than 20 years, EPA's "once-in always-in" required major sources to remain subject to stricter control standards, even if they took steps to reduce their pollution below the threshold.

Republicans quickly cheered the move by EPA Administrator Scott Pruitt, especially those from states that produce oil, gas and coal.

"The EPA's decision today is consistent with President Trump's agenda to keep America's air clean and our economy growing," said Senate Environment Committee Chairman John Barrasso of Wyoming. "Withdrawal of this policy means manufacturers, oil and gas operations, and other types of industrial facilities will have greater incentive to reduce emissions."

Environmentalists predicted the change would drastically weaken limits on toxic heavy metals emitted from power-plant smokestacks.

"This is among the most dangerous actions that the Trump EPA has taken yet against public health," said John Walke, the director for clean air issues at the Natural Resources Defense Council. "Rolling back longstanding protections to allow the greatest increase in hazardous air pollutants in our nation's history is unconscionable."

John Coequyt, who leads climate policy initiatives for the Sierra Club, said the move will lead directly to dirtier air and more deaths.

"Trump and Pruitt are essentially creating a massive loophole that will result in huge amounts of toxic mercury, arsenic, and lead being poured into the air we breathe, meaning this change is a threat to anyone who breathes and a benefit only to dangerous corporate polluters," Coequyt said.



**To:** Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]; Wehrum, Bill[Wehrum.Bill@epa.gov]; Woods, Clint[woods.clint@epa.gov]  
**Cc:** Atkinson, Emily[Atkinson.Emily@epa.gov]; Loving, Shanita[Loving.Shanita@epa.gov]; Wagner, Kenneth[wagner.kenneth@epa.gov]  
**From:** Miles Keogh  
**Sent:** Fri 1/26/2018 6:00:37 PM  
**Subject:** Meeting with NACAA next week

Dear Bill, Mandy, and Clint,

I hope things are going well – I’m writing to give you guys some final details on our upcoming board meeting. I’m really excited to help connect you with the NACAA leadership. We’ve asked y’all to participate on January 31 between 1:30 pm and 3:30 pm, here at the Hall of States, 444 North Capitol St NW. We’ll have someone downstairs to help you get in through security and make sure you get to the meeting room on the third floor (and if your logistics team wants to reach me, I’ll have my phone Ex. 6 - Personal Privacy forwarded to my cell.) It’ll be a closed session with about 30 state and local air agency heads, plus the NACAA staff.

As for substance, Bill, I’m told you have a pretty good overview of OAR’s direction and priorities, building on the lines of what you talked about at CAAAC but updated to reflect stuff since. I wonder if you’d mind starting us out with that? Mandy, I wanted to ask if you could talk about the same stuff from the perspective of what’s in your hopper, especially inasmuch as you have insights into the yearlong conversation that y’all have had about what cooperative federalism actually means, in practice. In total I think we’re looking for about an hour or 75 minutes of us listening to EPA, and the hour-ish balance as q&a. I’ve been asked to have a sort of ordered Q&A which Bart Sponseller from Wisconsin & Sam Rubens from Akron OH will moderate. Clint, if EPA sees there are things you’re the right guy to touch on, of course it’s very welcome. You may be able to talk about implementation & budgets and the links to the strategic plan, or may not, but it’s all welcome. I also know you may be suddenly unavailable!

Friends, I always come to the table with a full plate of goals, and I’ll be forthright about them – my folks are eager to get work done with EPA and to really walk the talk on cooperative federalism. In as much as you guys can frame your remarks around what they’re interested in, it’s that. What’s the formal and informal institutional infrastructure that connects the local and state implementers with the policies you’re making? How can that partnership be made much more effective, and kick in at a much earlier point in the process? How to we open up communications so we’re a constructive part of the policymaking process instead of reacting to it?

On a substantive basis, we'll have structured questions about the NAAQS, permit streamlining, about the CPP ANPRM, vehicle standards (especially MTE, gliders, and locomotives), "once in always in", international transport, enforcement issues, and fumigation. I know that's a lot of ground and not super specific, but I'm still corralling up the members' ideas. I thought I'd give you as much heads-up as possible.

If you have questions or suggestions, please don't hesitate. It was good to see you this week in Texas, Clint, thanks for coming out and ably representing EPA with the state and local agencies.

My best, Miles

---

Miles Keogh

NACAA

(202) 624-5981

@WeAre4CleanAir

**To:** Wehrum, Bill[Wehrum.Bill@epa.gov]  
**From:** POLITICO Pro Energy  
**Sent:** Fri 1/26/2018 10:44:33 AM  
**Subject:** Morning Energy: Trump takes the stage — Plenty of room at the White House inn — One-on-one with Barrasso

By Kelsey Tamborrino | 01/26/2018 05:42 AM EDT

*With help from Eric Wolff*

**TRUMP TAKES THE STAGE:** President Donald Trump is set to speak this morning from Davos, Switzerland, where he'll deliver a simple message to world leaders: "A prosperous America benefits the world, and fair economic competition is essential to that prosperity," the [White House said](#). Trump prepared for his speech Thursday by meeting with longtime U.S. allies: The prime ministers of Great Britain and Israel, and he declared that he had arrived with a message of "peace and prosperity." More on that [here](#).

**"When I decided to come to Davos, I didn't think in terms of elitists or globalists,** I thought in terms of lots of people who want to invest lots of money and they're all coming back to the United States. They're coming back to America, and I thought of it much more in those terms," Trump explained in an interview with CNBC. "After I said that I was going, there were massive stories about the elite and the globalists and the planes flying in and everything else. It's not about that. It's about coming to America, investing your money, creating jobs, companies coming in. We're setting records. Every day, we're setting records."

**Already "energy dominance" remarks emerged this week** from Energy Secretary Rick Perry, but watch for Trump to tout trade policy in his address to the World Economic Forum, including his brand new tariffs on solar equipment. The White House outlined that the president will describe how "America First" fits into a the forum's theme of "a shared future in a fractured world." On trade, Trump will likely discuss the administration's support of trade that is fair and reciprocal to the U.S. "The global economy cannot flourish unless all countries follow the rules and are held responsible when they don't," the White House said. The president is also looking to "forge closer ties" with allies, including French President Emmanuel Macron and Canadian Prime Minister Justin Trudeau — who have bumped heads with Trump on trade and climate policies in the past. Watch it [here](#).

**HAPPY FRIDAY!** I'm your host Kelsey Tamborrino. Many of you were very close, but no one guessed that in 1975, the Senate adopted a rule requiring most of its committees to work in public. That same year, the Senate approved open conference committee sessions. For today: How many senators attended the world premiere of "Mr. Smith Goes to Washington" held at Constitution Hall? Send your tips, energy gossip and comments to [ktamborrino@politico.com](mailto:ktamborrino@politico.com), or follow us on Twitter [@kelseytam](#), [@Morning\\_Energy](#) and [@POLITICOPro](#).

**PLENTY OF ROOM AT THE WHITE HOUSE INN:** Republican lawmakers are increasingly concerned that the Trump administration has yet to fill several energy-related vacancies across the federal government. A year out from Trump's inauguration, still no name has been selected for key positions, including overseeing EPA's Superfund program or to lead

the Bureau of Land Management or National Park Service, Pro's Anthony Adragna reports.

**Let's break this down:** Trump has yet to nominate 244 people out of the 635 key positions requiring Senate confirmation, according to a [tracker](#) from The Washington Post and Partnership for Public Service. Of those, there are no nominees for seven of the 17 slots at Interior requiring Senate confirmation, Anthony reports. At EPA, it's six of 13 spots, and 11 of 22 positions at the Energy Department. There's also been no movement on vacancies within the White House's Office of Science and Technology Policy, including the top spot, the longest that role has gone without a nominee.

**Why, you ask?** Some Republicans blame Democrats for drawing out the confirmation process, which others say has driven other potential candidates to opt out of government service altogether. But Trump himself vowed in an [interview](#) with Forbes in November that he didn't intend to fill out agency staffing. "I'm generally not going to make a lot of the appointments that would normally be — because you don't need them," Trump said.

**Still, the vacancies are cause for frustration for many:** "It has to make it just that much more difficult within the agencies to just be so short-teamed," Senate Energy Chairman [Lisa Murkowski](#) said. "I know people who have been nominated already who are getting really frustrated. It's demoralizing," Sen. [Dan Sullivan](#) said. "They have real lives. They have bills they got to pay. We need to do better." Read the story [here](#).

**ONE-ON-ONE WITH BARRASSO:** What's Year 2 atop Senate EPW mean for Wyoming's [John Barrasso](#)? In an interview with Anthony, Barrasso echoes the White House's focus on infrastructure, praises his Democratic cohort [Tom Carper](#) and discusses where exactly he falls in ongoing talks on the Renewable Fuel Standard. **Some highlights from [the exclusive interview](#):**

**On infrastructure:** "[P]art of what we're doing with WRDA right now is infrastructure. Water resource development is infrastructure. But you need to deal with the roads, the highways, the bridges, the dams, all of it out there. So, I'm optimistic. We'll be discussing it at the retreat and I hope the president brings it up in the State of the Union. And I mentioned that to both [National Economic Council] Director [Gary] Cohn and [Transportation] Secretary [Elaine] Chao that I think it would be good to have the president put some meat on the bones during the State of the Union address next Tuesday."

**On paying for it:** "There's a difference between rural and urban. Public-private partnerships] can work in urban areas. They're not going to work in rural areas."

**On Renewable Fuel Standard talks:** "If a refinery goes bankrupt because of a system that the government put in place after the refinery was built, that's not a system that's worked. So we need to modernize and modernize this to take into account where we are today with the technology and the vehicles and the amount of fuel being consumed. [Sen. [John Cornyn](#)'s] leading the efforts to develop this bipartisan reform bill that all the stakeholders can support and then once that's introduced the committee is going to give it serious consideration."

**ONCE-IN POLICY NO MORE:** EPA air chief Bill Wehrum withdrew Clinton-era guidance

Thursday that was designed to prevent major emitters from getting out of strict requirements to limit their toxic air emissions. "This guidance is based on a plain language reading of the statute that is in line with EPA's guidance for other provisions of the Clean Air Act," Wehrum said in a [statement](#). "It will reduce regulatory burden for industries and the states, while continuing to ensure stringent and effective controls on hazardous air pollutants." In a memo, EPA revoked the 1995 so-called once-in always-in policy and said it would consider new regulations to clarify its interpretation of the law, Pro's Alex Guillén [reports](#). Under the previous policy, any emitter that qualified as a "major" source of hazardous air pollutants, like power plants and factories, would forever be subject to that tougher standard to comply with MACT rules, even if its emissions dropped low enough to be considered an "area" source subject to fewer or no requirements, Alex writes. Read the memo [here](#).

**Barrasso and Sen. Shelley Moore Capito previously asked** EPA Administrator Scott Pruitt to withdraw the policy earlier this month, they said on Thursday, cheering the move. "Withdrawal of this policy means manufacturers, oil and gas operations, and other types of industrial facilities will have greater incentive to reduce emissions," Barrasso said in a statement. "Now these companies can help protect the environment without wasting time and money on unnecessary red tape."

**Not so fast:** [Ed Markey](#) said the move "could be the worst environmental sin yet from the Trump administration." Greens were also quick to call out the decision; The League of Conservation Voters's Sara Chieffo called it a "gutting" of public health protections.

**BIODIESEL PRODUCERS CREDIT STILL IN DISCUSSION:** The biodiesel producers' credit supported by Sen. [Chuck Grassley](#) and some Midwestern senators still has life. [Orrin Hatch](#)'s tax extenders bill revives the credit for blenders of biodiesel, but the Finance committee members are still considering moving it to a producers credit, according to Derek Theurer, an aide to [Bill Cassidy](#) who was only speaking at a Jones Day tax conference Thursday. "There's members on the Senate side that have views both ways. Some that would like to move to producers' credits, others that are concerned about impact on consumers, the price of fuel," he said. "That's the kind of competing interests being weighed and members are continuing to discuss it."

**TERMS AGREED IN SUNCOKE SETTLEMENT:** Metallurgical coke producer SunCoke Energy and Cokenergy reached an agreement to resolve alleged Clean Air Act violations related to leaking coke ovens and excessive bypass venting of hot coking gases, the Justice Department said. A consent decree requires estimated annual emissions reductions of 2,075 tons of coke oven emissions and requires coke oven rebuilds, DOJ said. Cokenergy will also spend \$250,000 on a lead abatement project in the East Chicago area. DOJ added, the companies "agreed to enhanced monitoring and testing requirements, including two stack tests to measure lead emissions," and will pay a \$5 million civil penalty. "Today's settlement is one example of how EPA is committed to reducing exposure to lead and other contaminants in communities across the country," Pruitt said on Thursday. "Lead exposure is a serious problem and reducing it is a priority for EPA."

**PRUITT AND THE PRESS:** E&E News chronicles Pruitt's relationship with the press in a

lengthy story from Thursday on the EPA chief's tour through the country on the Waters of the U.S. rule. Based on roughly thousands of pages of documents obtained through public records requests to multiple states, E&E's Ariel Wittenberg and Kevin Bogardus piece together Pruitt's press strategy. Read it [here](#).

**CALIFORNIA CALLING:** California Gov. Jerry Brown celebrated the Golden State and rebuked the president's climate agenda Thursday during his final "State of the State" address. The governor "rallied this bulwark of the Democratic Party to push forward on climate change, immigration and high-speed rail, signaling another year of conflict between Washington and the nation's most populous state," POLITICO's David Siders and Carla Marinucci [report](#). "Despite what is widely believed by some of the most powerful people in Washington, the science of climate change is not in doubt," the Democratic governor said Thursday. "All nations agree except one, and that is solely because of one man: our current president." Brown added, "Here in California, we follow a different path."

**Brown's agenda, which includes fighting climate change, [putting 5 million zero-emission vehicles on the road by 2030](#)** and defending a state gas tax increase, "stands starkly at odds with the White House, and the governor cut at Trump implicitly," David and Carla write, setting the stage for year another of year of Washington fights from the state. It also continues a yearlong trend of feuding with Trump for the coastal state, with tensions heightening already this year. [Earlier this week](#), state Attorney General Xavier Becerra filed a lawsuit challenging the administration's repeal of an Obama-era fracking rule, and on Thursday, the California delegation, including Sens. [Kamala Harris](#) and [Dianne Feinstein](#), [wrote to Interior Secretary Ryan Zinke](#), requesting Californians be able to comment on the offshore drilling proposal. Read more [here](#).

**DINNER WITH TRUMP:** The president had dinner in Davos with multinational business leaders Thursday, including Eldar Saetre of Norway's Statoil ASA and Patrick Pouyanne of France's Total SA. Much like his Cabinet meetings, Trump went around the table and had each participant discuss his business. At one point, Pouyanne said his company was investing in renewables, joking to Trump, "and maybe you disagree." Saetre, meanwhile, used his time to congratulate Trump on tax reform. "I think that is really good news, for all of us here, but for oil and gas and our industry."

**SOUTH KOREA WANTS SOLAR CONSULTATION:** South Korea asked the WTO twice separately this week for a consultation with the U.S. on its recent [solar tariff](#) and [washing machine](#) decisions. Korea argues the U.S. violated several international trade rules in its action, Pro's Adam Behsudi [reports](#). Separate from the WTO's dispute settlement process, the requests kick-start a process under the WTO's safeguards agreement.

**WEATHER CHANNEL TAKES STAND ON CLIMATE:** The Weather Channel website took a stance on climate change Thursday, posting a banner that blared "THERE IS NO CLIMATE CHANGE DEBATE," and linked to a series of stories showing its effect. The company posted a [statement](#) detailing its "United States of Climate Change" project that will focus on such stories, but will not debate the science of climate change. "We're going to see how individuals, communities and businesses are responding to the changes that are already

happening in America, and how they're preparing for the changes that have yet to occur," the website wrote.

**LCV ENDORSES IN ILLINOIS:** The LCV Action Fund backed two congressional candidates on Thursday: Brendan Kelly for Illinois' 12th District and Erik Jones in the 13th District. "Brendan Kelly and Erik Jones are exciting new voices for climate action and environmental protection," said LCV Action Fund Senior Vice President of Government Affairs Tiernan Sittenfeld.

**MAIL CALL:** General president of the United Association, Mark McManus, penned a letter to Trump on Thursday, on the Renewable Fuel Standard and bankruptcy of Philadelphia Energy Solutions. Read the letter [here](#).

**MOVER, SHAKER:** The Trust for Public Land announced Thursday that Diane Regas will be the organization's new president and CEO. Regas is currently executive director of Environmental Defense Fund.

## QUICK HITS

— Trump wanted to know how U.S. stacks up to Russia on science, [E&E News](#).

— FirstEnergy executive: Davis-Besse plant headed for premature closure, [The Blade](#).

— A University of Cincinnati professor wanted to work for Trump's EPA. He ended up demonized — and jobless, [Cincinnati.com](#).

— Trump's solar tariff leaves state renewables targets in limbo, [Bloomberg](#).

— Puerto Rico offers fiscal plan settling debt for pennies on the dollar, [The Washington Post](#).

— Scientists are calling on the American Museum Of Natural History to cut ties with the Mercers, [BuzzFeed](#).

## HAPPENING TODAY

1:10 p.m. — The College of Agriculture, Urban Sustainability and Environmental Sciences and the Citizens' Climate Lobby hold the 2018 [Mid-Atlantic Regional Conference](#), 4200 Connecticut Avenue NW

3:00 p.m. — The Society of Environmental Journalists, George Mason University and the Wilson Center hold an [event](#) on "2018 Journalists' Guide to Energy and Environment," 1300 Pennsylvania Ave NW

## THAT'S ALL FOR ME!

*To view online:*

<https://www.politicopro.com/newsletters/morning-energy/2018/01/trump-takes-the-stage-084081>

## Stories from POLITICO Pro

### World nervously watches Trump's Davos debut [Back](#)

By Louis Nelson | 01/25/2018 11:45 AM EDT

President Donald Trump arrived at the World Economic Forum in Switzerland Thursday a man on a mission: to demonstrate his prowess on the world stage to a mountain town full of political and business leaders skeptical of his administration.

In a pair of bilateral meetings with the prime ministers of Great Britain and Israel, Trump touted his White House's warm ties with each nation, both longtime steadfast U.S. allies. As he entered the forum's hall, Trump declared that he had arrived with a message of "peace and prosperity." He basked in warm praise from Israeli Prime Minister Benjamin Netanyahu and seemingly sought to smooth a reported rift in his relationship with his British counterpart, Theresa May.

That Trump was in attendance at Davos, considered a meeting of international elites where globalism is often championed, seemed strange for a president who campaigned on and has governed with an "America First" agenda that is skeptical of multinational trade agreements and of U.S. participation in international organizations like the United Nations. Trump is the first U.S. president to attend the annual gathering in Switzerland since Bill Clinton in 2000, his final year in office.

"When I decided to come to Davos, I didn't think in terms of elitists or globalists, I thought in terms of lots of people who want to invest lots of money and they're all coming back to the United States. They're coming back to America, and I thought of it much more in those terms," Trump explained in an interview with CNBC. "After I said that I was going, there were massive stories about the elite and the globalists and the planes flying in and everything else. It's not about that. It's about coming to America, investing your money, creating jobs, companies coming in. We're setting records. Every day, we're setting records."

But while Trump's particular style of politics [continues](#) to rattle the international political and economic types who regularly attend Davos, the first year of his presidency seems to have calmed some, at least in the latter group. The U.S. economy has performed well through Trump's first year in office, as have other prominent economies worldwide. Many at Davos predicted the tax cut and reform legislation signed by the president last year will further spur the U.S. economy.

"There's been a lot of warmth, a lot of respect for our country, and a lot of money, billions and billions of dollars is coming into the U.S., and people are very happy with what we've done, not only on the tax bill, but also cutting of regulations, and I think also being a cheerleader for our country," Trump told reporters at a group dinner Thursday evening in Switzerland. "You know, if you're not a cheerleader for your company or for your country, no matter what happens, it's not going to work. And that's what I've been and that's what my whole group has been."



Still, Trump's bombast continues to stir nervousness and the president is not generally highly regarded among those flocking to the Swiss ski town this week. Trump is scheduled to give a speech Friday at the forum, for which Marietje Schaake, a prominent Dutch politician in the European Parliament, offered this prediction: "With low expectations, it will not take much to exceed them," adding that "at the end of the day, while words matter, actions always speak louder than words."

With May, Trump offered the pool of reporters traveling with him at the forum in Davos assurances that the pair continues to share "a really great relationship," that he has "tremendous respect" for his British counterpart and that "the feeling is mutual from the standpoint of liking each other a lot."

Trump said the U.S. and Britain are "joined at the hip" on military issues and told May "there's nothing that would happen to you that we won't be there to fight for you. You know that."

A spokesman for May said the pair discussed the need to cooperate on peacekeeping efforts such as working "to ensure Iran does not develop nuclear weapons."

The leaders, Downing Street said, agreed to continue "to stand side-by-side" in their fight against the Islamic State.

The president's reassurances follow a relatively rocky patch in the U.S.-U.K. "special relationship" that included Trump's abrupt cancellation of a trip to London (placing the blame for that cancellation, incorrectly, on his predecessor, Barack Obama) and his sharing on Twitter of anti-Muslim videos posted by a leader from a British far-right, ultranationalist group. The latter offense earned Trump a rebuke from a May spokesman.

Trump and May directed officials to finalize arrangements for a visit by the U.S. leader to the U.K. sometime this year, May's spokesperson said.

With Netanyahu, the conversation in front of the cameras focused largely on the president's announcement last month that the U.S. would recognize Jerusalem as Israel's capital and begin the process of moving its embassy there. Netanyahu heaped praise on the president for the controversial decision, criticized even by close U.S. allies, telling him that the decision would be "forever etched on the hearts of our people for generations to come."

While Trump's bombastic style, unpredictability and willingness to diverge from the norms of past White House occupants has seemingly injected doubt into U.S. relationships around the globe, the president's stridently pro-Israel positions have strengthened the bond between the two nations, which sunk to a low point during the Obama administration.

Netanyahu in particular praised Trump for the skeptical eye with which he has viewed the landmark nuclear agreement the U.S. helped negotiate with Iran, telling the president and the assembled media that Israel would "back you all the way" should he decide to pull the U.S. from the agreement championed by Obama's White House.

"I've never seen the realistic alliance between the United States, Israel and your other allies in the region as strong, as unified as it is under your leadership," Netanyahu said. "As you finish your first year in office, I want to say that I look forward to continuing our remarkable, tremendous friendship in the years ahead, and I want to express the appreciation of the people of Israel to you. Thank you, Mr. President."

*Cristiano Lima contributed to this report.*

*To view online [click here](#).*

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## **Republicans frustrated by lingering agency vacancies [Back](#)**

By Anthony Adragna | 01/26/2018 05:01 AM EDT

Republican lawmakers are growing impatient with the Trump administration's delays in nominating candidates for energy-related positions across the federal government, creating a vacancy problem that experts say could lead to missed opportunities to put GOP policies into action.

More than a year after President Donald Trump entered the White House, the administration hasn't picked anyone to run key positions such as the office overseeing EPA's Superfund program, a focal point of Administrator Scott Pruitt's agenda. There's no one formally selected to lead the Bureau of Land Management or National Park Service, key positions in rolling out Interior Secretary Ryan Zinke's public lands plans.

"It has to make it just that much more difficult within the agencies to just be so short-teamed," Senate Energy and Natural Resources Chairwoman [Lisa Murkowski](#) (R-Alaska) told POLITICO.

In total, there are currently no nominees for seven of the 17 slots at Interior requiring Senate confirmation. The figure at EPA stands at six of 13 spots, while 11 of 22 positions at the Energy Department have no nominee. There's also been no movement on vacancies within the White House's Office of Science and Technology Policy, including the top spot, the longest that role has gone without a nominee.

The White House did not respond to a request for comment on whether it planned to nominate officials to the vacancies.

Some Republican lawmakers laid the blame on Democrats for drawing out the Senate confirmation process procedurally, which they say created a nomination backlog that has lessened the pressure on Trump to add more names to the waiting list. Others say lengthy confirmation battles that have forced some nominees to wait over a year for a vote have prompted potential candidates to opt of government service.

But whatever the reason, spots critical to the agendas of Cabinet members remain unfilled.

"I hear some of my colleagues just laying the blame right at the feet of the [Democrats], and, when it comes to slowing things down procedurally on the floor, there's clearly blame there," Murkowski said. "But if we don't even have the names that we can process through the committee to get to the floor, then you can't pass that blame off to the Democrats. There are things that need to happen within the administration."

The lingering vacancies perhaps should not be surprising given Trump's vows in a November [interview](#) with Forbes that he didn't intend to fill out agency staffing. "I'm generally not going to make a lot of the appointments that would normally be — because you don't need them," Trump said, calling some of the positions "totally unnecessary."

To date, only 331 Trump administration nominees have been confirmed by the Senate compared to 468 OK'd by the same point in the Obama administration.

Donald Kettl, a professor with the University of Maryland's School of Public Policy, said that while there are some signs of a slowdown of nominations in the Senate — it's taken Trump nominees an average of 72 days for confirmation compared to 54 days for Obama nominees over the same time period — there's not "a lot of evidence" that difference stems primarily from Democratic intransigence.

"Are the Democrats responsible for some of it? Sure," he said. "Are they primarily responsible for the pace of the nominations? No."

Experts say a slow start by the administration in nominating people, delays in completing paperwork for Congress and a packed Senate calendar that included major pushes on health care and taxes also contributed to a slow pace of confirmations.

"Democrats are not to blame on this one," Paul Light, a professor at New York University's Wagner Graduate School of Public Service, said. "Although they do have somewhat more freedom to ask nominees to answer written responses to questions and are demanding more formal confirmation votes, Republicans simply did not have the nominees to send to the floor when they had the muscle. Timing is everything here. Again, steady wins the prize."

Still, lawmakers say the lengthy confirmation battles are making harder to attract people willing to serve in government.

"It's a vicious cycle because if you can't get the assistant secretary of whatever in, then it's hard to get the BLM director in," Sen. [Dan Sullivan](#) (R-Alaska) said. "I know people who have been nominated already who are getting really frustrated. It's demoralizing. They have real lives. They have bills they got to pay. We need to do better."

Other lawmakers said that while they'd like to see the slots filled eventually, the immediate impacts on agency work would be limited.

"Would I like to see them? Yeah. Does it hamper the ability to move the agenda? No," House Natural Resources Chairman Rob Bishop (R-Utah) said. "Many of the acting directors that they have right now in those areas are people that I know and respect and they're moving in the right direction, so I'm comfortable with them."

Some experts disagree, though, and say relying on acting officials to occupy positions requiring Senate confirmation indefinitely has consequences, since nominees undergo strict scrutiny during the process and must prove their credentials, and acting officials don't have the same political capital to move major initiatives.

"When agencies are unstaffed or lacking qualified leadership, it has an acute, corrosive effect," said William Buzbee, a law professor at Georgetown University. "That kind of effect is felt quite quickly."

Lobbying efforts continue behind the scenes from some lawmakers to get the empty slots filled. Senate Environment and Public Works Chairman John Barrasso (R-Wyo.), for example, said he continues to regularly discuss personnel matters with White House staff.

Some experts say the administration may be intentionally keeping some acting officials in positions since they doubt they could pass congressional muster. They point to Albert Kelly, Pruitt's senior adviser on Superfund issues, who joined the agency just weeks after agreeing to be banned from working in the banking industry.

Cary Coglianese, a law professor at the University of Pennsylvania, said it was "troubling" to see the administration relying so heavily on acting officials since Republicans control the Senate.

"When an administration has a Senate majority of the same party and it's still worrying it can't get its nominees through, then it makes you wonder what kind of quality or what kind of views these nominees might have," he said. "It shouldn't be so surprising that a minority party is going to be employ whatever procedural hurdles or delays they have available to them."

Others blame the continued vacancies squarely on Democratic resistance. Congressional Western Caucus Chairman Paul Gosar (R-Ariz.) said the unfilled roles are "no failing" of Trump officials since nominations continue to actually outpace Senate confirmations.

"Vacancies for which there are no pending nominations might be a concern if Senate Democrats were not slow-walking or opposing every nominee proposed — but they are," Gosar said in a statement. "And while it is obviously preferable that an Administration receive the staffing to which it is entitled, the Trump Administration has been able to make remarkable progress on land, resource and energy issues even in the face of that nomination stonewalling."

For their part, Democrats say they aren't surprised by the lagging nominations, and some see it as part of a broader administration to systematically weaken federal agencies through neglect.

"I think they'll stay vacant for a while," House Natural Resources ranking member Raúl M.

Grijalva (D-Ariz.) told POLITICO. "I almost think there's a deliberateness not to do that — to let it through atrophy just die on the vine."

To view online [click here](#).

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## **POLITICO Pro Q&A: Senate EPW Chairman John Barrasso** [Back](#)

By Anthony Adragna | 01/25/2018 04:02 PM EDT

Sen. John Barrasso begins his second year atop the Environment and Public Works Committee, and he says he's committed to moving an infrastructure package that he expects will have "presidential commitment and muscle behind it."

In an interview, Barrasso says he's urged administration officials to press President Donald Trump to "put some meat on the bones" of the infrastructure plan during the State of the Union address, and he wants to set deadlines of two years for federal permit approvals for projects.

And Barrasso is taking part in talks to alter the nation's biofuel program, and if legislation to revamp the Renewable Fuel Standard emerges, EPW would give "serious consideration" to proposals to modernize the program.

*The following transcript has been edited for length and clarity.*

**An infrastructure package is a key priority for 2018. Sen. Jim Inhofe said he was "frustrated" the White House's plan has yet to emerge and Sen. John Thune said the president would have to show real leadership to get something done this year. Do you share their concerns?**

At the committee meeting last week we had both Secretary of Transportation [Elaine] Chao, as well as [National Economic Council director] Gary Cohn attending and visiting with us about infrastructure. And this was a bipartisan meeting. We had most of the members — Republicans and Democrats. We're committed — Republicans and Democrats — to getting something done.

It's a big priority for the committee. I think we've had a very successful 2017 with lots of accomplishments. But infrastructure is clearly a main topic to the point that I believe at our retreat next week, we're going to be having a discussion on infrastructure again with the secretary of Transportation.

**So you're optimistic about getting something done even though legislating during an election years can be more difficult?**

I'm committed to working with the administration and with the Democrats, and certainly with all the members of our committee on both sides of the aisle, to get something done. I think it's

important. We have a need in the community and in the country. There's no question about it.

And part of what we're doing with WRDA right now is infrastructure. Water resource development is infrastructure. But you need to deal with the roads, the highways, the bridges, the dams, all of it out there. So, I'm optimistic. We'll be discussing it at the retreat and I hope the president brings it up in the State of the Union. And I mentioned that to both Director Cohn and Secretary Chao that I think it would be good to have the president put some meat on the bones during the State of the Union address next Tuesday.

**Have you ever thought of putting out your own plan since the White House's timeline seems to have slipped?**

We've been working on a plan that I've been working on with the Democrats as well. Many of the hearings that we have have been infrastructure-related. The president has frequently talked about upgrading the infrastructure of the country, and I think we need a robust infrastructure bill with presidential commitment and muscle behind it. And I believe we'll get it.

**Do you see opportunities in the package that emerges to tweak or revisit provisions of the Clean Air Act, Clean Water Act, Endangered Species Act and National Environmental Policy Act?**

So much of what I'm focused on now are the roads and bridges, but clearly you need to be able to get projects done. You need to be able to streamline this whole process so that projects can be both started faster and finished faster, because you want to make sure taxpayers are getting bang for their buck. You need to have things [so] people feel that they're not just being dragged out. It just seems silly when you see some project that could take months to complete but years to permit — people get the fact that that's a sign of Washington not getting its job done.

Things [have to be] approved by a certain period of time — whether that's two years [or] a shorter period of time. And if they can't get the permits done, at what point do you say, "Look, people have made their best faith effort and this government couldn't get permits done?" To me, that says they ought to be approved if the government can't work its way through the process in a short period of time. Most people around the country don't think two years is a short period of time but for government that's setting speed records.

**The perennial issue with infrastructure seems to be paying for it, and I would imagine some of the ideas often floated, like a gas tax hike, are probably non-starters for you. Are there other promising ideas you've seen to date?**

There's a difference between rural and urban. [Public-private partnerships] can work in urban areas. They're not going to work in rural areas. So you need federal funding and commitment for rural areas, which aren't going to lend themselves to the partnerships between the public and the private areas. You almost need to look at the two separately and in our discussions with the administration, they do seem to have the two tracks for an urban versus a rural approach. And funding in that.

**What's it been like working with the Democrats so far in this? Have Ranking Member Tom Carper and his staff been open partners and also looking to get something done?**

Senator Carper is actually a very good partner to work with. He was here visiting with me today for a half an hour in my office. I go visit with him and we visit on the floor frequently. We had four dozen hearings last year, advanced a lot of nominations, passed a lot of different legislation of all different kinds.

We have all these discussions about how to more quickly update and modernize the permitting process and also how to pay for things. His model and mine are a little different on the funding, but we know we need to get this done and find a way to do this. The EPW committee, from a public works standpoint, has had a lot of success in the past. It's done a lot of work in a bipartisan way. I think we've worked very closely, both sides of the aisle, to make sure the people who came in to testify — and clearly I had a lot of people from Wyoming to talk about rural issues and rural needs and why they're unique — but I think every member of the committee would say they've felt they've had an opportunity to bring somebody in from their state to make the case about what their specific needs could be whether it's highways, bridges, dams, water, ports, you name it.

**Have you been participating in the talks between Sen. John Cornyn and other senators on Renewable Fuel Standard issues? And do you think there's a compromise possible on biofuels that can get through your committee?**

I've been part of those discussions, yes.

We need a solution to the problem. The way that the RFS program was put into place, in my opinion, did not visualize where we are today, with a greater amount of fuel efficiency, with the number of electric vehicles. So the system that was designed was one that just viewed greater and greater volumes of gasoline being used. And didn't take into account some of the changes that we've seen with technology.

If a refinery goes bankrupt because of a system that the government put in place after the refinery was built, that's not a system that's worked. So we need to modernize and modernize this to take into account where we are today with the technology and the vehicles and the amount of fuel being consumed.

[Cornyn's] leading the efforts to develop this bipartisan reform bill that all the stakeholders can support and then once that's introduced the committee is going to give it serious consideration.

**A number of the West Coast states have blocked coal export facilities from being built. Is there a role at all for the federal government to intervene?**

I think it's important to be able to export coal. People around the world want to buy energy from America. The president talks about energy dominance and we need to use the resources that we have in this country. We've gone from energy security to energy independence to energy dominance. And to be able to use energy as the geopolitical weapon that it can be and deal with

how [Russian President Vladimir] Putin uses energy as a weapon, I think we need to make sure that we have opportunities to sell to other countries what we have in the United States in abundance. It's good for our jobs, it's good for the economy. Energy, as a resource, it's called the master resource for a reason because of what it powers. It powers our economy. It powers our jobs. And powers the military. So it's an instrument of power. It's a force multiplier, and I think we should use it as such.

I'd like to see those ports opened up. Many of the workers there want those jobs in those areas but you have this division between the workers — many of whom are union workers — and the environmental extremists who are trying to block them. That's where the loggerheads is and we're trying to get those ports open.

**What are your thoughts on being EPW chairman after Year One? Are you enjoying the job so far and how do you balance those responsibilities with your time atop the Senate Republican Policy Committee?**

Wyoming [is] such an energy state and, to me, the most beautiful state in the country — and maybe one of the most beautiful places in the world. So what you know is from the standpoint from the people of Wyoming, we have protected our environment. We have great respect for our environment and the best stewards of the land are the people that live on the land. We have a long history of doing it right and we have multiple use of the land in Wyoming. Half of the land in Wyoming is run and owned by the federal government, so we know what it's like to have such a large federal footprint in the state. And we just believe we ought to be able to use our resources and do it in ways that are respectful of the environment as we have done it.

It's an area that to me is a great deal of focus. It's something I've worked on from the day I showed up in the Senate, the first day I took the oath of office. That hasn't changed. I'm just able to have additional opportunity to bring people back from Wyoming to testify on the topics that are in front of the committee. So I think that helps lend voice to the vision and the values that we have in Wyoming.

*To view online [click here](#).*

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**EPA drops 'once in, always in' policy from key Clean Air Act requirements [Back](#)**

By Alex Guillén | 01/25/2018 06:11 PM EDT

EPA today withdrew a Clinton-era policy that was designed to prevent major emitters like power plants and factories from getting out of tough requirements to limit their toxic air emissions.

In a new [memo](#), EPA air chief Bill Wehrum wrote that the "once in, always in" policy "is contrary to the plain language" of the Clean Air Act. Wehrum revoked a [1995 guidance memo](#) outlining the policy and said EPA would consider new regulations to clarify its interpretation of



the law.

Under the now-revoked guidance, any emitter that qualified as a "major" source of hazardous air pollutants would forever be subject to that tougher standard to comply with MACT rules, even if its emissions dropped low enough to be considered an "area" source subject to fewer or no requirements. Wehrum's memo said the law does not specify that such classifications are permanent.

"EPA has now determined that a major source which takes an enforceable limit on its [potential emissions] and takes measures to bring its HAP emissions below the applicable threshold becomes an area source, no matter when the source may choose to take measures to limit its" potential pollution emissions, Wehrum wrote.

Wehrum argued that the policy shift will actually encourage sources that hesitated to install emission reduction projects to move forward. Environmentalists, however, quickly blasted the change on social media.

The Bush administration twice attempted to change the OIAI policy but never succeeded.

**WHAT'S NEXT:** Wehrum's memo says EPA will "soon publish a Federal Register notice to take comment on adding regulatory text that will reflect EPA's plain language reading of the statute."

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**Brown thumps Trump in final State of the State address** [Back](#)

By David Siders and Carla Marinucci | 01/25/2018 05:57 PM EDT

SACRAMENTO — In a wide-ranging defense of California — and a rebuke of President Donald Trump and the Republican-held Congress — Gov. Jerry Brown on Thursday rallied this bulwark of the Democratic Party to push forward on climate change, immigration and high-speed rail, signaling another year of conflict between Washington and the nation's most populous state.

Delivering his final State of the State address, Brown cast California as a more enlightened alternative to "the poison in our politics" and to "the abysmal approval ratings given to the U.S. Congress."

He called for the state to complete a massive high-speed rail project reviled by many Republicans in Washington, and to put 5 million zero-emission vehicles on California roads by 2030.

"Despite what is widely believed by some of the most powerful people in Washington, the

science of climate change is not in doubt," the Democratic governor told a joint session of the Legislature here. "All nations agree except one, and that is solely because of one man: our current president."

Brown said, "Here in California, we follow a different path."

Brown and the state's heavy bench of Democratic officeholders have feuded with Trump since the Republican president took office last year. But tensions heightened this month, with the Trump administration threatening to undermine the state's marijuana market, proposing oil drilling off the California coast and vowing to dramatically increase immigration enforcement in the state.

On Wednesday, the state attorney general, Xavier Becerra, filed litigation challenging the Trump administration's repeal of an Obama-era hydraulic fracturing regulation, while Trump took aim at San Francisco and other sanctuary cities that he said are the "best friend of gangs and cartels like MS-13."

While relatively cautious in his criticism of Trump, Brown's agenda — combating climate change, health care, defending a state gas tax increase — stands starkly at odds with the White House, and the governor implicitly cut at Trump.

Recalling headlines that derided California as "ungovernable" and "doomed" when Brown inherited a yawning budget deficit as he took office in 2011, Brown said, "Even today, you will find critics who claim the California dream is dead. But I'm used to that."

Now California enjoys a budget surplus, and Brown pointed to the state's approval of a water bond, a budget reserve and a cap-and-trade extension, among other legislative achievements, as evidence "that some American governments actually can get stuff done."

Heralding crowds that participated in Women's March events this month and activists who champion the cause of undocumented young people, Brown said, "In all this, California was in the forefront, showing the way."

In a reflective address — at nearly 30 minutes, unusually long for Brown — the governor acknowledged Trump's approval of "substantial assistance" in disaster aid after California's devastating wildfires and mudslides.

But Brown excoriated the Republican majority in Washington for its attempt to undo health care legislation on which California relies for billions of dollars in federal aid.

"Thank God for John McCain, Lisa Murkowski and Susan Collins," he said. "Along with the Democrats, they prevailed and protected health care for tens of millions of Americans."

For Brown, a fourth-term governor who abandoned his own presidential ambitions after running three times for the White House, the speech served as a reminder of the accomplishments of his final terms, but also the uncertainty of his legacy as he prepares to leave office in January 2019.

Brown is almost sure to be replaced by a Democrat keeping with his positions on climate change and immigration. But as Brown prepares to exit public life, California's poverty rate remains the highest in the nation when adjusted for the cost of living, and the state's tax system relies heavily on its top earners, a major source of volatility. Brown's two signature infrastructure initiatives — building high-speed rail and a water conveyance system — are also mired in uncertainty, with multibillion price tags and fierce political opposition to both projects.

Earlier this month, California officials said the estimated cost of an initial leg of the project in California's Central Valley had alone climbed \$2.8 billion, throwing into doubt the state's cost estimate for the overall project of about \$64 billion. The project will almost certainly require additional federal money, which proponents acknowledge is unlikely while Republicans control the House.

On Thursday, Brown said, "I make no bones about it. I like trains, and I like high-speed trains even better."

"Yes, it costs a lot of money," he said. "But it's still cheaper and more convenient than expanding airports, which nobody wants to do, and building new freeways."

Brown was flanked on the rostrum by two of the several Democrats who are bidding to succeed him. Many of those candidates, including the front-runner, Lt. Gov. Gavin Newsom, have been more strident than Brown in their rhetoric deriding Trump, suggesting animosity between the state and Washington may only intensify.

After Brown's remarks, Newsom said Brown's speech underscored the challenges ahead for California leaders of the next generation.

"It's a baton to be passed," he said, one that emphasizes "success is not a definition — it's a direction."

Brown, governor before from 1975 to 1983, drew loud applause in the Assembly chambers, and even Republicans praised him for his fiscal moderation. But Republican Assemblywoman Catharine Baker said she was concerned "to see him double down on high-speed rail," while Republican Assembly Leader Brian Dahle said Brown failed to adequately address the rising cost of living in the state.

"Some people are spending 50 percent of their pay on rent," Dahle said. With increasing taxes, Dahle said, "they're raising revenues off the back of people here."

Yet Republicans represent a small minority in the California Legislature and have little influence in state politics. And Brown, with a favorable approval rating and millions of dollars remaining in his campaign war chest, has avoided lame-duck treatment entering his final year. He pledged to "do everything in my power" to defeat an effort to repeal a gas tax increase.

Asked as he left the lectern what his father, the late Gov. Edmund G. "Pat" Brown, would say

about his final speech, Brown said, "Persistence."

Then asked if he would run for office again, Brown — who has said before that he will not run for president in 2020 — offered a familiar quip.

"You never know," the 79-year-old said. "Never say never."

*To view online [click here](#).*

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## **California to sue over federal fracking rule repeal** [Back](#)

By Alex Guillén | 01/24/2018 12:00 PM EDT

California will sue the Trump administration for repealing the Obama-era fracking rule, California Attorney General Xavier Becerra announced today.

The repeal of the 2015 Bureau of Land Management regulation was [formalized](#) late last month.

"They didn't follow the law, they didn't let the law or the facts change their way in their zeal to repeal what was a commonsense measure," Becerra told reporters on a conference call. California's lawsuit will argue Interior violated the Administrative Procedure Act by failing to justify the repeal, and Becerra said the state also will pursue NEPA violations over the environmental impacts of fracking.

"I think there is plenty of reason to doubt that the fracking repeal engaged in by the administration will withstand scrutiny in a court," Becerra added.

The Obama fracking rule was struck down in 2016 by a federal judge in Wyoming who said Interior did not have the authority to regulate the practice at all. That issue was on appeal to the 10th Circuit, but that case is expected to be dismissed as moot and the lower court's ruling vacated now that the rule has been repealed.

Becerra sidestepped questions about how California could win when the underlying rule was itself in legal jeopardy, saying the lawsuit over the repeal "is going to stand on its own."

**WHAT'S NEXT:** California will file the lawsuit over the fracking rule's repeal.

*To view online [click here](#).*

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## **South Korea asks for WTO consultation with U.S. over washing machine, solar import curbs** [Back](#)

By Adam Behsudi | 01/25/2018 10:48 AM EDT

South Korea has filed two separate requests at the WTO for consultations with the United States on recent restrictions on imports of [washing machines](#) and [solar products](#), arguing that the actions violate several international trade rules.

The requests made on Wednesday begins a process under the WTO's safeguards agreement. The requests are different from the WTO's dispute settlement process but could still lead to South Korea retaliating against the U.S. actions if the two countries can't settle their differences in 30 days.

President Donald Trump this week [approved](#) import restrictions on washing machines and solar products under Section 201 of the Trade Agreement of 1974.

Countries are allowed a certain amount of flexibility to impose safeguards under WTO rules, but South Korea argues that the U.S. action breaches a number of provisions under the safeguards agreement and the General Agreement on Tariffs and Trade.

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This email was sent to wehrum.bill@epa.gov by: POLITICO, LLC 1000 Wilson Blvd.  
Arlington, VA, 22209, USA

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**To:** Wehrum, Bill[Wehrum.Bill@epa.gov]  
**From:** Gunasekara, Mandy  
**Sent:** Thur 1/25/2018 11:18:04 PM  
**Subject:** Fwd: EPA drops 'once in, always in' policy from key Clean Air Act requirements

Sent from my iPhone

Begin forwarded message:

**From:** "POLITICO Pro Energy Whiteboard" <[politicoemail@politicopro.com](mailto:politicoemail@politicopro.com)>  
**Date:** January 25, 2018 at 6:12:55 PM EST  
**To:** <[gunasekara.mandy@epa.gov](mailto:gunasekara.mandy@epa.gov)>  
**Subject:** EPA drops 'once in, always in' policy from key Clean Air Act requirements  
**Reply-To:** "POLITICO subscriptions" <[reply-fe911373746d007977-1159543\\_HTML-847413686-1376319-0@politicoemail.com](mailto:reply-fe911373746d007977-1159543_HTML-847413686-1376319-0@politicoemail.com)>

By Alex Guillén

01/25/2018 06:11 PM EDT

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**WHAT'S NEXT:** Wehrum's memo says EPA will "soon publish a Federal Register notice to take comment on adding regulatory text that will reflect EPA's plain language reading of the statute."

*To view online:*

<https://www.politicopro.com/energy/whiteboard/2018/01/epa-drops-once-in-always-in-policy-from-key-clean-air-act-requirements-480570>

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This email was sent to [gunasekara.mandy@epa.gov](mailto:gunasekara.mandy@epa.gov) by: POLITICO, LLC 1000 Wilson Blvd. Arlington, VA, 22209, USA

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**To:** Wehrum, Bill[Wehrum.Bill@epa.gov]; Lewis, Josh[Lewis.Josh@epa.gov]  
**From:** cmsadmin@epa.gov  
**Sent:** Thur 1/25/2018 8:50:06 PM  
**Subject:** CMS For Review - Maria Carroll - OAR-18-000-3788

Control OAR-18-000-3788 is in your CMS In Box for review. Please go to the CMS webpage to view the details of the control.

Summary Information -  
Control Number: OAR-18-000-3788  
Control Subject: OIAI Memo  
From: Tsirigotis, Peter

Note: This Email was automatically generated. Please do not attempt to respond to it. You can access this control at <https://cms.epa.gov/cms>. Questions or comments concerning CMS should be directed to CMS Support at 202-564-4985 or CMS Information@epa.gov.

**To:** Wehrum, Bill[Wehrum.Bill@epa.gov]  
**Cc:** Lewis, Josh[Lewis.Josh@epa.gov]  
**From:** Cyran, Carissa  
**Sent:** Fri 12/15/2017 10:32:26 PM  
**Subject:** E-Folder for Monday, December 18, 2017  
[OAR Dec Bowling Chart 12 14 17.xlsx](#)  
[OAR Dec Business Review Agenda 12 19 17.docx](#)  
[OAR Measures - Strategic, APG, and FY 18-19 Budget Measures 12 15 17.docx](#)  
[Performance Measurement Framework 12 15 17.docx](#)  
[2017-11-27-business-review-training.pdf](#)  
[CAA 111 Briefing 12182017\\_rev1.pptx](#)  
[HPBA and PFI BW 12 18 17.docx](#)  
[AA Wehrum RTP visit final agenda 12 18 17.docx](#)  
[OIAI Options 12 18 17.docx](#)  
[NO2 NAAQS Option Select 12 18 17.pptx](#)

Hello, Bill,

I hope you had a great trip out at Region 9. DC is cold with a few snow flurries. I will be out of the office starting on Monday but will be back in on Tuesday, January 2<sup>nd</sup>. I hope you have a great holiday!

**7:00am - 8:30am American Airlines Flight #4858 From Philadelphia to Raleigh**

**8:30am - 9:00am Transfer from the airport to RTP with Mike Koerber - Mike's Cell** Ex. 6 - Personal Privacy

**9:15am - 10:00am Residential Wood Heaters NSPS**

**10:00am - 10:45am Prep Meeting for the Mission Measures Discussion**

For the December 18<sup>th</sup> Prep Meeting for the Mission Measures Discussion, we are providing the following materials:

For December 18<sup>th</sup> - Overview of Performance Framework and Measure Types Prep for Business Review

- Performance Measurement Framework
- OAR Strategic Measure, FY 18-19 Agency Priority Goal, and FY 18-19 Budget Measures

For December 19<sup>th</sup> - Business Review

- December Business Review Agenda
- Current Draft (12-14-17) of OAR Bowling Chart

Background

Training Slides for Conducting Business Reviews

**11:15am - 12:00pm OAQPS All Hands**

**12:00pm - 12:45pm General Discussion re: NSR**

**1:00pm - 1:45pm Informational Briefing Regarding Review of 111(b) and 111(d)**

<b>2:00pm - 2:45pm</b>	<b>Once-in, Always-in Policy Revision</b>
<b>3:00pm - 4:00pm</b>	<b>Pre-brief for Option Selection for NO2 Primary NAAQS</b>
<b>3:15pm - 4:45pm</b>	<b>Transfer from RTP to the Airport</b>
<b>5:55pm - 7:26pm</b>	<b>American Airlines Flight#1997 from Raleigh to Philadelphia</b>

**To:** Lubetsky, Jonathan[Lubetsky.Jonathan@epa.gov]; Wehrum, Bill[Wehrum.Bill@epa.gov];  
Lewis, Josh[Lewis.Josh@epa.gov]  
**From:** cmsadmin@epa.gov  
**Sent:** Tue 1/23/2018 6:11:30 PM  
**Subject:** CMS For Review - Maria Carroll - AL-18-000-3332

Control AL-18-000-3332 is in your CMS In Box for review. Please go to the CMS webpage to view the details of the control.

Summary Information -

Control Number: AL-18-000-3332

Control Subject: RE: RESCINDE A CURRENT EPA POLICY "ONCE-IN-ALWAYS-IN" UNDER THE  
CLEAN AIR ACT

From: Barrasso, John; Capito, Shelley Moore

Note: This Email was automatically generated. Please do not attempt to respond to it. You can access this control at <https://cms.epa.gov/cms>. Questions or comments concerning CMS should be directed to CMS Support at 202-564-4985 or CMS Information@epa.gov.

**From:** Gunasekara, Mandy  
**Location:** WJC-N 5400  
**Importance:** Normal  
**Subject:** Accepted: Once In, Always In Comms Discussion  
**Start Date/Time:** Wed 1/24/2018 9:45:00 PM  
**End Date/Time:** Wed 1/24/2018 10:15:00 PM

**From:** Harnett, Bill

**Location:** WJC-N 5400 + Video with OAQPS + Ex. 6 - Personal Privacy Participant Code: Ex. 6 - Personal Privacy

**Importance:** Normal

**Subject:** Accepted: Once-in, Always-in Policy Revision

**Start Date/Time:** Mon 12/18/2017 7:00:00 PM

**End Date/Time:** Mon 12/18/2017 7:45:00 PM



**From:** Wood, Anna

**Location:** WJC-N 5400 + Video with OAQPS + Ex. 6 - Personal Privacy Participant Code: Ex. 6 - Personal Privacy  
Ex. 6 - Personal Privacy

**Importance:** Normal

**Subject:** Accepted: Once-in, Always-in Policy Revision

**Start Date/Time:** Mon 12/18/2017 7:00:00 PM

**End Date/Time:** Mon 12/18/2017 7:45:00 PM

**From:** Kornylak, Vera S.

**Location:** WJC-N 5400 + Video with OAQPS + Ex. 6 - Personal Privacy Participant Code: Ex. 6 - Personal Privacy

Ex. 6 - Personal Privacy

**Importance:** Normal

**Subject:** Accepted: Once-in, Always-in Policy Revision

**Start Date/Time:** Mon 12/18/2017 7:00:00 PM

**End Date/Time:** Mon 12/18/2017 7:45:00 PM

**From:** Santiago, Juan

**Location:** WJC-N 5400 + Video with OAQPS + Ex. 6 - Personal Privacy Participant Code: Ex. 6 - Personal Privacy

**Importance:** Normal

**Subject:** Accepted: Once-in, Always-in Policy Revision

**Start Date/Time:** Mon 12/18/2017 7:00:00 PM

**End Date/Time:** Mon 12/18/2017 7:45:00 PM

**From:** Vetter, Rick

**Location:** WJC-N 5400 + Video with OAQPS + Ex. 6 - Personal Privacy Participant Code Ex. 6 - Personal Privacy

**Importance:** Normal

**Subject:** Accepted: Once-in, Always-in Policy Revision

**Start Date/Time:** Mon 12/18/2017 7:00:00 PM

**End Date/Time:** Mon 12/18/2017 7:45:00 PM

**From:** Gunasekara, Mandy

**Location:** WJC-N 5400 + Video with OAQPS + Ex. 6 - Personal Privacy; Participant Code: Ex. 6 - Personal Privacy

**Importance:** Normal

**Subject:** Accepted: Once-in, Always-in Policy Revision

**Start Date/Time:** Wed 12/20/2017 9:00:00 PM

**End Date/Time:** Wed 12/20/2017 10:00:00 PM

**To:** Bowman, Liz[Bowman.Liz@epa.gov]  
**Cc:** Block, Molly[block.molly@epa.gov]; Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]  
**From:** Wehrum, Bill  
**Sent:** Sat 1/27/2018 12:03:53 AM  
**Subject:** Re: Once In Always In News Coverage

I like it.

---

Bill Wehrum  
Assistant Administrator  
Office of Air and Radiation  
U.S. Environmental Protection Agency  
(202) 564-7404

On Jan 26, 2018, at 6:35 PM, Bowman, Liz <Bowman.Liz@epa.gov> wrote:

Headline could be worse...

**From:** Block, Molly  
**Sent:** Friday, January 26, 2018 2:03 PM  
**To:** Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Wehrum, Bill <Wehrum.Bill@epa.gov>  
**Cc:** Bowman, Liz <Bowman.Liz@epa.gov>  
**Subject:** RE: Once In Always In News Coverage

And one more:

### **E&E News**

<https://www.eenews.net/greenwire/2018/01/26/stories/1060072119>

### **EPA Kills Clinton-Era Industrial Standards**

Sean Reilly, 1/26/18

Barely two weeks after Republican lawmakers sought to scrap a Clinton-era air policy

intended to limit industrial pollution, U.S. EPA air chief Bill Wehrum obliged yesterday, saying in a memo that the "once in, always in" policy ran contrary to the Clean Air Act.

Wehrum's decision, effective immediately, won swift applause from industry groups but denunciations from environmental organizations, one of which vowed to fight it "with every available tool."

The policy, dating back to 1995, had applied to factories and other "major" industrial pollution sources subject to maximum achievable control technology (MACT) standards because they annually release more than 10 tons of a single air toxic or 25 tons of any combination of hazardous pollutants.

Under the policy, the standards remained in place even if a facility's emissions dropped below the relevant thresholds on the grounds that a polluter could otherwise backslide.

But in yesterday's memo, Wehrum said that interpretation was not authorized by the "plain language" of the Clean Air Act. Revoking it "will reduce regulatory burden for industries and the states, while continuing to ensure stringent and effective controls on hazardous air pollutants," he said in an accompanying press release. EPA plans to seek public comment, he indicated in the memo.

Repeal was welcomed by Senate Environment and Public Works Chairman John Barrasso (R-Wyo.). Together with Sen. Shelley Moore Capito (R-W.Va.), Barrasso had urged EPA earlier this month to scrap the policy, saying that it in fact acted as disincentive to curb emissions (E&E Daily, Jan. 10). In a press release yesterday, he called Wehrum's decision "consistent with President Trump's agenda to keep America's air clean and our economy growing."

Also praising the move was the American Forest & Paper Association, where President and CEO Donna Harman said it would reduce and "remove disincentives to voluntary efforts and technical innovations that could reduce emissions."

John Walke, clean air director at the Natural Resources Defense Council, ranked repeal among the "most dangerous actions" yet taken by the Trump administration and said it "drastically weakens" protective limits on arsenic, lead and other air pollutants.

"NRDC will fight this terrible decision to unleash toxic pollutants with every available tool," Walke said.

In ending the "once, in always in" policy, Wehrum could be seen as tending to unfinished business dating back to his stint as acting EPA air chief from 2005 to 2007 during George W. Bush's administration. During that time, EPA proposed rescinding the 1995 directive but was blocked by Congress. While EPA never took final action on that 2007 proposal, Wehrum wrote yesterday, it was never withdrawn.

**From:** Block, Molly  
**Sent:** Friday, January 26, 2018 1:07 PM  
**To:** Gunasekara, Mandy <[Gunasekara.Mandy@epa.gov](mailto:Gunasekara.Mandy@epa.gov)>; Wehrum, Bill <[Wehrum.Bill@epa.gov](mailto:Wehrum.Bill@epa.gov)>  
**Cc:** Bowman, Liz <[Bowman.Liz@epa.gov](mailto:Bowman.Liz@epa.gov)>  
**Subject:** Once In Always In News Coverage

Coverage linked below and attached.

**"Once In Always In" Coverage**

[Wall Street Journal: EPA Withdraws Air Pollution Policy](#)

[The Hill: EPA loosens rules on some 'major' air pollution sources](#)

[Politico: EPA drops 'once in, always in' policy from key Clean Air Act requirements](#)

[Reuters: U.S. EPA Reverse Policy on 'Major Sources' of Pollution](#)

[Inside EPA: EPA Ends 'Once In, Always In' Air Policy, Easing Facilities' MACT Mandates](#)

[Washington Examiner: EPA Weakens Rules on Emissions From Polluters](#)



BN: EPA Drops Toxic Pollutant Policy It Called Burden to Business

Associated Press: EPA ends clean air policy opposed by fossil fuel interests

## Wall Street Journal

<https://www.wsj.com/articles/epa-withdraws-air-pollution-policy-1516935178?mod=searchresults&page=1&pos=4>

### **EPA Withdraws Air Pollution Policy**

By Timothy Puko, 1/25/18, 9:52 AM

WASHINGTON—The Trump administration is withdrawing a decades-old air policy aimed at reining in some of the largest sources of hazardous pollutants like mercury and lead.

The Environmental Protection Agency said late Thursday it is getting rid of requirements that it forever keep sites classified as “major sources” of hazardous air pollution once they meet that classification. This “once-in always-in” policy punished industry by keeping factories and other sites under heavy regulation even if they made improvements that would prevent them from being major sources of pollution, according to the EPA and lawmakers who had requested the move.

Environmentalists and congressional critics decried the change, saying it is one of the EPA’s bedrock environmental regulations that keeps polluters from trimming back to just below the major-source classification cutoff to avoid requirements that could further lower their emissions.

President Donald Trump has made a rollback of environmental regulations one of his signature issues, carrying out a main campaign promise by withdrawing or rewriting rules designed to fight climate change, coal-ash pollution and coastal flooding, among many others. It is part of a broad attempt to make oil companies, power plants and manufacturers, among several different industries, more competitive by lowering their costs.

The latest change “will reduce regulatory burden for industries and the states, while continuing to ensure stringent and effective controls on hazardous air pollutants,” Bill Wehrum, assistant administrator of the EPA’s Office of Air and Radiation, said in a statement.

The policy, dating back to 1995, requires facilities that annually emit 10 tons or more of a single air pollutant or 25 tons or more of a group of pollutants to use the maximum achievable technology controls to lower their pollution. Deploying the technology required by that standard can lower pollution by as much as 95%. It applies to nearly 200 pollutants, including arsenic, dioxins, lead and mercury.

Republicans Sen. Shelley Moore Capito of West Virginia and Sen. John Barrasso of Wyoming, both from heavy coal-producing states, sent a letter to the EPA earlier this month asking for the change. They said the inability of plants to escape from being classified as a major source removed an incentive to invest and make further improvements.

Environmentalists argue that the opposite is the case, and they have been successful in blocking the rule’s withdrawal in the past. The EPA tried to withdraw the rule during President George W. Bush’s administration, too—when Mr. Wehrum last worked at the EPA in the same office—and Congress blocked the effort. At the time, the Natural Resources Defense Council leaked an EPA internal memo in which regional EPA officials criticized the proposal. They said industrial facilities could “backslide” from having to use the stricter technology controls, which would allow them to increase pollution and still meet the standard.

Thursday’s move, “drastically weakens protective limits on air pollutants...that cause cancer, brain damage, infertility, developmental problems and even death,” John Walke, the NRDC’s clean air director, said in a statement. “And those harmed most would be nearby communities already suffering a legacy of pollution.”

The change will primarily help steel, paper and chemical makers among other manufacturing sites, said Jeff Holmstead, a partner at law and lobbying firm Bracewell LLP, who led the EPA’s Office of Air and Radiation during Mr. Bush’s first term. NRDC says hundreds of plants could be affected. The number is unclear, Mr. Holmstead said, and

they would all need to go through a recertification process to benefit, he added.

“It certainly does give manufacturing plants more flexibility in terms of how they reduce their pollution,” he added. “It certainly does reduce the regulatory burden.”

## The Hill

<http://thehill.com/policy/energy-environment/370786-epa-loosens-rules-on-some-major-air-pollution-sources>

### **EPA loosens rules on some ‘major’ air pollution sources**

By Timothy Cama, 1/25/18, 5:10 PM

The Environmental Protection Agency (EPA) loosened regulatory compliance standards Thursday for certain sources of air pollution previously considered "major."

William Wehrum, head of the EPA’s air office, put out regulatory guidance repealing the “once in, always in” policy, in which facilities like power plants or factories considered “major” sources of hazardous air pollutants were always regulated as such, even if the facilities’ owners took measures to reduce pollution.

“This guidance is based on a plain language reading of the statute that is in line with EPA’s guidance for other provisions of the Clean Air Act,” Wehrum said in a statement. “It will reduce regulatory burden for industries and the states, while continuing to ensure stringent and effective controls on hazardous air pollutants.”

The previous standard had been enforced since 1995. “Major” air pollution sources are subject to much stricter rules for what they must do to reduce emissions such as mercury compounds and benzene.

The EPA argued that the “once in, always in” standard disincentivized companies from reducing pollution and targeted it as part of the Trump administration’s overarching goal of cutting regulatory burdens.

“Nothing in the structure of the [Clean Air Act] counsels against the plain language reading of the statute to allow major sources to become area sources after an applicable compliance date,” Wehrum wrote in his guidance.

The Natural Resources Defense Council slammed the move, saying it will cause the biggest increase in air pollution in United States history.

“This is among the most dangerous actions that the Trump EPA has taken yet against public health,” John Walke, the group’s clean air director, said in a statement. “This move drastically weakens protective limits on air pollutants like arsenic, lead, mercury and other toxins that cause cancer, brain damage, infertility, developmental problems and even death. And those harmed most would be nearby communities already suffering a legacy of pollution.”

## Politico

<https://www.politicopro.com/energy/whiteboard/2018/01/epa-drops-once-in-always-in-policy-from-key-clean-air-act-requirements-480570>

### **EPA drops ‘once in, always in’ policy from key Clean Air Act requirements**

By Alex Guillen, 1/25/18, 6:11 PM

EPA today withdrew a Clinton-era policy that was designed to prevent major emitters like power plants and factories from getting out of tough requirements to limit their toxic air emissions.

In a new memo, EPA air chief Bill Wehrum wrote that the "once in, always in" policy "is contrary to the plain language" of the Clean Air Act. Wehrum revoked a 1995 guidance memo outlining the policy and said EPA would consider new regulations to clarify its interpretation of the law.

Under the now-revoked guidance, any emitter that qualified as a "major" source of hazardous air pollutants would forever be subject to that tougher standard to comply with MACT rules, even if its emissions dropped low enough to be considered an "area" source subject to fewer or no requirements. Wehrum's memo said the law does not specify that such classifications are permanent.

"EPA has now determined that a major source which takes an enforceable limit on its [potential emissions] and takes measures to bring its HAP emissions below the applicable threshold becomes an area source, no matter when the source may choose to take measures to limit its" potential pollution emissions, Wehrum wrote.

Wehrum argued that the policy shift will actually encourage sources that hesitated to install emission reduction projects to move forward. Environmentalists, however, quickly blasted the change on social media.

The Bush administration twice attempted to change the OIAI policy but never succeeded.

WHAT'S NEXT: Wehrum's memo says EPA will "soon publish a Federal Register notice to take comment on adding regulatory text that will reflect EPA's plain language reading of the statute."

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## Reuters

<https://www.reuters.com/article/us-usa-trump-epa/u-s-epa-reverses-policy-on-major-sources-of-pollution-idUSKBN1FF075>

### U.S. EPA Reverse Policy on 'Major Sources' of Pollution

By Eric Beech, 1/25/18, 9:37 pm

The U.S. Environmental Protection Agency said on Thursday it was withdrawing a provision of the Clean Air Act that requires a major source of pollution like a power plant to always be treated as a major source, even if it makes changes to reduce emissions.

The decision to withdraw the “once-in always-in” policy is part of President Donald Trump’s effort to roll back federal regulations and was sought by utilities, the petroleum industry and others.

Sources of air pollution previously classified as “major sources” may be reclassified as “area” sources when the facility limits its emissions below “major source” thresholds, the EPA said. Area sources are subject to less strict pollution control standards than major sources.

“It will reduce regulatory burden for industries and the states, while continuing to ensure stringent and effective controls on hazardous air pollutants,” Bill Wehrum, assistant administrator of the EPA’s Office of Air and Radiation, said in a statement.

The “once-in always-in” policy, which was established in 1995, has been a disincentive for power plants, factories and other major sources of pollution to pursue technological innovations that would reduce emissions, the agency said.

The Natural Resources Defense Council, an environmental group, said the decision “is among the most dangerous actions that the Trump EPA has taken yet against public health.”

“This move drastically weakens protective limits on air pollutants like arsenic, lead, mercury and other toxins that cause cancer, brain damage, infertility, developmental problems and even death,” John Walke, director of a clean air program for the NRDC, said in a statement.

# Inside EPA

<https://insideepa.com/daily-news/epa-ends-once-always-air-policy-easing-facilities-mact-mandates>

## **EPA Ends ‘Once In, Always In’ Air Policy, Easing Facilities’ MACT Mandates**

By Stuart Parker, 1/25/18

EPA has withdrawn its contested “once in, always in” policy that subjected industrial facilities to strict maximum achievable control technology (MACT) air toxics rules for their lifetime even if they reduced and kept emissions below MACT levels, a major win for GOP senators, the Commerce Department and others who oppose the policy.

In a Jan. 25 “[guidance](#)” memo sent to EPA's regional air directors, the agency's air chief William Wehrum rescinds the 1995 policy, clearing the way for plants to reduce their potential to emit (PTE) and escape MACT emissions limits if they keep their emissions below MACT limits. MACT limits apply to “major” sources of hazardous air pollutants (HAPs), defined as those sources emitting in excess of 10 tons per year (tpy) of one HAP or 25 tpy of a combination of HAPs.

“This guidance is based on a plain language reading of the statute that is in line with EPA’s guidance for other provisions of the Clean Air Act,” said Wehrum in a statement. “It will reduce regulatory burden for industries and the states, while continuing to ensure stringent and effective controls on hazardous air pollutants.”

EPA in the statement adds that the policy “has been a longstanding disincentive for sources to implement voluntary pollution abatement and prevention efforts, or to pursue technological innovations that would reduce hazardous air pollution emissions,” saying the move is part of the Trump administration's deregulatory agenda.

Sources that limit their PTE below the major source thresholds will now be considered “area sources” subject to less-stringent air pollution control requirements.

Wehrum in the memo writes, “EPA has now determined that a major source which takes an enforceable limit on its PTE and takes measures to bring its HAP emissions below the applicable threshold becomes an area source, no matter when the source may choose to take measures to limit its PTE.”

He notes, “Congress placed no temporal limitations on the determination of whether a

source emits or has” the potential to emit HAPs “in sufficient quantity to qualify as a major source.”

Wehrum in the memo says that “EPA anticipates that it will soon publish a Federal Register notice to take comment on adding regulatory text that will reflect EPA's plain language reading of the statute.”

The notice will give critics of the move an opportunity to comment and potentially lay the foundation for eventual litigation against either the memo or a resulting regulation to implement the decision.

### Deregulatory Agenda

Industry groups and others responding to earlier Trump administration solicitations for comment on what deregulatory steps would be helpful cited ending the policy as one step that EPA should take.

For example, the Commerce Department in [a regulatory review report last year](#) urged the agency to “review the 'once in, always in' policy to clarify the means by which a facility currently classified as a major source can become an area source,” identifying it as a potential barrier to industry.

Sources told Inside EPA last year that the White House appears to be [supporting states' calls](#) to overhaul smaller “in-the-weeds” EPA rules such as the once in, always in policy, in lieu of calls to undo “big ticket” Obama-era policies.

More recently, Senate Environment & Public Works Committee (EPW) Chairman John Barrasso (R-WY) and EPW clean air panel Chairman Shelley Moore Capito (R-WV) sent [a Jan. 9 letter to EPA Administrator Scott Pruitt](#) urging him to end the policy. They argued that the policy serves to discourage, rather than promote, emissions reductions.

But environmentalists in early reaction are calling the policy withdrawal reckless. The new policy will “allow hundreds of U.S. industrial facilities to dramatically increase their emissions of the most toxic air pollutants regulated by the Clean Air Act,” the Natural Resources Defense Council (NRDC) said in a Jan. 25 statement.

NRDC Clean Air Director John Walke said, “This is among the most dangerous actions that the Trump EPA has taken yet against public health. Rolling back longstanding protections to allow the greatest increase in hazardous air pollutants in our nation's history is unconscionable.”

Walke promises NRDC “will fight this terrible decision to unleash toxic pollutants with every available tool.” However, because it is a guidance memo rather than a regulation, environmentalists may find the move harder to challenge in court, where it may be more difficult to establish as a “final agency action” subject to judicial review.



# Washington Examiner

<http://www.washingtonexaminer.com/epa-weakens-rules-on-emissions-from-polluters/article/2647110>

## EPA Weakens Rules on Emissions From Polluters

By Josh Siegel, 1/25/18, 5:49 pm

The Environmental Protection Agency on Thursday withdrew a policy that imposed strict limits on hazardous air pollutants emitted by factories, plants, or other types of facilities considered "major" polluters.

The longstanding "once-in-always-in" policy, established in 1995, said major polluting facilities failing to meet certain emission thresholds always had to meet those standards from then on, even if the facility made changes to reduce its pollution.

With the new Trump administration policy, sources of hazardous air pollutants previously classified as "major sources" for their high amount of polluting may be reclassified as "area" sources when the facility limits its potential to emit pollution.

"This guidance is based on a plain language reading of the statute that is in line with EPA's guidance for other provisions of the Clean Air Act," said Bill Wehrum, assistant administrator of EPA's Office of Air and Radiation. "It will reduce regulatory burden for industries and the states, while continuing to ensure stringent and effective controls on hazardous air pollutants."

The EPA said the "once-in-always-in" policy has discouraged facilities from implementing pollution control technology to reduce emissions. Sens. John Barrasso, R-Wyo., chairman of the Senate Environment and Public Works Committee, and Shelley Moore Capito, R-W.Va., had asked the Trump administration to abandon the policy.

"The EPA's decision today is consistent with President Trump's agenda to keep America's air clean and our economy growing," Barrasso said. "Withdrawal of this policy means manufacturers, oil and gas operations, and other types of industrial facilities will have greater incentive to reduce emissions. Now these companies can help protect the environment without wasting time and money on unnecessary red tape."

Environmentalists said the EPA's change would allow facilities to emit more pollution and vowed to fight the move.

"This is among the most dangerous actions that the Trump EPA has taken yet against public

health,” said John Walke, clean air director and a senior attorney for the Natural Resources Defense Council. “Rolling back longstanding protections to allow the greatest increase in hazardous air pollutants in our nation’s history is unconscionable. Those harmed most would be nearby and downwind communities already suffering a legacy of toxic pollution. NRDC will fight this terrible decision to unleash toxic pollutants nationwide with every available tool.”

## BNA

[http://esweb.bna.com/eslw/display/no\\_alpha.adp?mode=si&frag\\_id=127424104&item=408&prod=deln&cat=](http://esweb.bna.com/eslw/display/no_alpha.adp?mode=si&frag_id=127424104&item=408&prod=deln&cat=)

### **EPA Drops Toxic Pollutant Policy It Called Burden to Business (Corrected)**

By Sara Merken, 1/26/18

Industrial facilities that reduce their ability to emit toxic air pollutants will be exempted from some requirements to control their emissions in a move the Trump administration said will encourage companies to reduce pollution voluntarily.

The Environmental Protection Agency Jan. 25 issued a memorandum withdrawing the “once-in-always-in” policy under the Clean Air Act, which prevents major sources of toxic air pollutants from removing pollution control devices after emissions fall below a certain threshold. Instead, those facilities can now be reclassified as smaller “area” sources that are subject to less stringent requirements.

“This guidance is based on a plain language reading of the statute that is in line with EPA's guidance for other provisions of the Clean Air Act,” Bill Wehrum, assistant administrator of EPA's Office of Air and Radiation, said in a statement. “It will reduce regulatory burden for industries and the states, while continuing to ensure stringent and effective controls on hazardous air pollutants.”

John Walke, director of the clean air project at the Natural Resources Defense Council, called the move “unconscionable and immoral.”

“This is the most reckless step taken by any EPA administrator in the agency's history,” Walke told Bloomberg Environment. His group and many states will vigorously fight the action, he said.

### **Policy Began in 1995**

The policy originated in a 1995 memorandum that clarified when major sources, which release at least 10 tons per year of a single hazardous air pollutant or 25 tons of any combination of toxic pollutants each year, can be reclassified area sources.

Since area sources are not required to install stringent pollution controls known as maximum achievable control technology, or MACT, major sources can avoid MACT requirements by limiting their emissions to become area source before a certain compliance deadline.

The American Forest & Paper Association, which counts the Procter & Gamble Co. and Georgia-Pacific LLC among its members, and the American Wood Council released a joint statement Jan. 25 welcoming the EPA's action. The move also drew praise from Republican senators who called on the EPA to withdraw the policy earlier this year.

“The EPA's decision today is consistent with President Trump's agenda to keep America's air clean and our economy growing,” Sen. John Barrasso (R-Wyo.), chairman of the Senate environment committee, said in a statement. “Withdrawal of this policy means manufacturers, oil and gas operations, and other types of industrial facilities will have greater incentive to reduce emissions. Now these companies can help protect the environment without wasting time and money on unnecessary red tape.”

Sens. Barrasso and Shelley Moore Capito (R-W.Va.) said the policy “disincentivizes air emissions reductions” in a Jan. 9 [letter](#) to EPA Administrator Scott Pruitt.

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## **Associated Press**

<https://www.sfgate.com/news/politics/article/EPA-ends-clean-air-policy-opposed-by-fossil-fuel-12526165.php>

## **EPA ends clean air policy opposed by fossil fuel interests**

By Michael Biesecker, 1/25/18

The Trump administration announced Thursday it is doing away with a decades-old air emissions policy opposed by fossil fuel companies, a move that environmental groups say will result in more pollution.

The Environmental Protection Agency said it was withdrawing the "once-in always-in" policy under the Clean Air Act, which dictated how major sources of hazardous air pollutants are regulated. Under the EPA's new interpretation, such "major sources" as coal-fired power plants can be reclassified as "area sources" when their emissions fall below mandated limits, subjecting them to differing standards.

Though formal notice of the reversal has not yet been filed, EPA said the policy it has followed since 1995 relied on an incorrect interpretation of the landmark anti-pollution law.

"This guidance is based on a plain language reading of the statute that is in line with EPA's guidance for other provisions of the Clean Air Act," said Bill Wehrum, assistant administrator of EPA's Office of Air and Radiation. "It will reduce regulatory burden for industries and the states, while continuing to ensure stringent and effective controls on hazardous air pollutants."

Prior to his confirmation by the GOP-dominated Senate in November, Wehrum worked as a lawyer representing fossil fuel and chemical companies. The American Petroleum Institute was among the industry groups that had called for the longstanding policy to be scrapped.

The Clean Air Act defines a "major source" as a one that has the potential to emit 10 tons or more per year of any hazardous air pollutant, or 25 tons per year of any combination of hazardous air pollutants. For more than 20 years, EPA's "once-in always-in" required major sources to remain subject to stricter control standards, even if they took steps to reduce their pollution below the threshold.

Republicans quickly cheered the move by EPA Administrator Scott Pruitt, especially those from states that produce oil, gas and coal.

"The EPA's decision today is consistent with President Trump's agenda to keep America's air clean and our economy growing," said Senate Environment Committee Chairman John Barrasso of Wyoming. "Withdrawal of this policy means manufacturers, oil and gas operations, and other types of industrial facilities will have greater incentive to reduce emissions."

Environmentalists predicted the change would drastically weaken limits on toxic heavy metals emitted from power-plant smokestacks.

"This is among the most dangerous actions that the Trump EPA has taken yet against public health," said John Walke, the director for clean air issues at the Natural Resources Defense Council. "Rolling back longstanding protections to allow the greatest increase in hazardous air pollutants in our nation's history is unconscionable.

John Coequyt, who leads climate policy initiatives for the Sierra Club, said the move will lead directly to dirtier air and more deaths.

"Trump and Pruitt are essentially creating a massive loophole that will result in huge amounts of toxic mercury, arsenic, and lead being poured into the air we breathe, meaning this change is a threat to anyone who breathes and a benefit only to dangerous corporate polluters," Coequyt said.

**To:** Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]  
**From:** Wehrum, Bill  
**Sent:** Thur 1/25/2018 11:20:01 PM  
**Subject:** Re: EPA drops 'once in, always in' policy from key Clean Air Act requirements

Excellent.

---

Bill Wehrum  
Assistant Administrator  
Office of Air and Radiation  
U.S. Environmental Protection Agency  
(202) 564-7404

On Jan 25, 2018, at 6:18 PM, Gunasekara, Mandy <[Gunasekara.Mandy@epa.gov](mailto:Gunasekara.Mandy@epa.gov)> wrote:

Sent from my iPhone

Begin forwarded message:

**From:** "POLITICO Pro Energy Whiteboard" <[politicoemail@politicopro.com](mailto:politicoemail@politicopro.com)>  
**Date:** January 25, 2018 at 6:12:55 PM EST  
**To:** <[gunasekara.mandy@epa.gov](mailto:gunasekara.mandy@epa.gov)>  
**Subject:** EPA drops 'once in, always in' policy from key Clean Air Act requirements  
**Reply-To:** "POLITICO subscriptions" <[reply-fe911373746d007977-1159543\\_HTML-847413686-1376319-0@politicoemail.com](mailto:reply-fe911373746d007977-1159543_HTML-847413686-1376319-0@politicoemail.com)>

By Alex Guillén

01/25/2018 06:11 PM EDT

EPA today withdrew a Clinton-era policy that was designed to prevent major emitters like power plants and factories from getting out of tough requirements to limit their toxic air emissions.

In a new [memo](#), EPA air chief Bill Wehrum wrote that the "once in, always in" policy "is contrary to the plain language" of the Clean Air Act. Wehrum revoked a [1995 guidance memo](#) outlining the policy and said EPA would consider new regulations to clarify its interpretation of the law.

Under the now-revoked guidance, any emitter that qualified as a "major" source of hazardous air pollutants would forever be subject to that tougher standard to comply

with MACT rules, even if its emissions dropped low enough to be considered an "area" source subject to fewer or no requirements. Wehrum's memo said the law does not specify that such classifications are permanent.

"EPA has now determined that a major source which takes an enforceable limit on its [potential emissions] and takes measures to bring its HAP emissions below the applicable threshold becomes an area source, no matter when the source may choose to take measures to limit its" potential pollution emissions, Wehrum wrote.

Wehrum argued that the policy shift will actually encourage sources that hesitated to install emission reduction projects to move forward. Environmentalists, however, quickly blasted the change on social media.

The Bush administration twice attempted to change the OIAI policy but never succeeded.

**WHAT'S NEXT:** Wehrum's memo says EPA will "soon publish a Federal Register notice to take comment on adding regulatory text that will reflect EPA's plain language reading of the statute."

*To view online:*

<https://www.politicopro.com/energy/whiteboard/2018/01/epa-drops-once-in-always-in-policy-from-key-clean-air-act-requirements-480570>

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This email was sent to [gunasekara.mandy@epa.gov](mailto:gunasekara.mandy@epa.gov) by: POLITICO, LLC 1000 Wilson Blvd. Arlington, VA, 22209, USA

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**Cc:** Lewis, Josh[Lewis.Josh@epa.gov]  
**To:** Cyran, Carissa[Cyran.Carissa@epa.gov]  
**From:** Wehrum, Bill  
**Sent:** Fri 12/15/2017 10:33:26 PM  
**Subject:** Re: E-Folder for Monday, December 18, 2017

Thanks Carissa. Happy Holidays!

---

Bill Wehrum  
 Assistant Administrator  
 Office of Air and Radiation  
 U.S. Environmental Protection Agency  
 (202) 564-7404

> On Dec 15, 2017, at 2:32 PM, Cyran, Carissa <Cyran.Carissa@epa.gov> wrote:  
 >  
 > Hello, Bill,  
 >  
 > I hope you had a great trip out at Region 9. DC is cold with a few snow flurries. I will be out of the office starting on Monday but will be back in on Tuesday, January 2nd. I hope you have a great holiday!  
 >  
 >  
 > 7:00am – 8:30am American Airlines Flight #4858 From Philadelphia to Raleigh  
 >  
 > 8:30am – 9:00am Transfer from the airport to RTP with Mike Koerber - Mike's Cell Ex. 6 - Personal Privacy  
 >  
 > 9:15am – 10:00am Residential Wood Heaters NSPS  
 >  
 > 10:00am – 10:45am Prep Meeting for the Mission Measures Discussion  
 > For the December 18th Prep Meeting for the Mission Measures Discussion, we are providing the following materials:  
 >  
 > For December 18th – Overview of Performance Framework and Measure Types Prep for Business Review  
 > • Performance Measurement Framework  
 > • OAR Strategic Measure, FY 18-19 Agency Priority Goal, and FY 18-19 Budget Measures  
 >  
 > For December 19th - Business Review  
 > • December Business Review Agenda  
 > • Current Draft (12-14-17) of OAR Bowling Chart  
 >  
 > Background  
 > Training Slides for Conducting Business Reviews  
 >  
 > 11:15am – 12:00pm OAQPS All Hands  
 >  
 > 12:00pm – 12:45pm General Discussion re: NSR  
 >  
 > 1:00pm – 1:45pm Informational Briefing Regarding Review of 111(b) and 111(d)  
 >  
 > 2:00pm – 2:45pm Once-in, Always-in Policy Revision  
 >  
 > 3:00pm – 4:00pm Pre-brief for Option Selection for NO2 Primary NAAQS  
 >  
 > 3:15pm – 4:45pm Transfer from RTP to the Airport



>  
> 5:55pm – 7:26pm American Airlines Flight#1997 from Raleigh to Philadelphia  
>  
>  
> <OAR Dec Bowling Chart 12\_14\_17.xlsx>  
> <OAR Dec Business Review Agenda 12 19 17.docx>  
> <OAR Measures - Strategic, APG, and FY 18-19 Budget Measures 12\_15\_17.docx>  
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> <NO2 NAAQS Option Select 12\_18\_17.pptx>